

Federal Register

Thursday
October 24, 1985

Briefings on How To Use the Federal Register—
For information on briefings in Atlanta, GA, see
announcement on the inside cover of this issue.

Selected Subjects

Accounting

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Advertising

Federal Trade Commission

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Banks, Banking

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Claims

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Endangered and Threatened Species

Fish and Wildlife Service

Fisheries

National Oceanic and Atmospheric Administration

Flood Insurance

Federal Emergency Management Agency

Government Procurement

Defense Department

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Questions and requests for specific information may be directed to the telephone numbers listed under **INFORMATION AND ASSISTANCE** in the **READER AIDS** section of this issue.

How To Cite This Publication: Use the volume number and the page number. Example: 50 FR 12345.

Selected Subjects

- General Services Administration
- Government Property Management**
- General Services Administration
- Indians—Law**
- Indian Affairs Bureau
- Marine Safety**
- Coast Guard
- Motor Vehicle Safety**
- National Highway Traffic Safety Administration
- Organization and Functions (Government Agencies)**
- Transportation Department
- Privacy**
- General Services Administration
- Poultry and Poultry Products**
- Agricultural Marketing Service
- Quarantine**
- Animal and Plant Health Inspection Service
- Radio Broadcasting**
- Federal Communications Commission
- Television Broadcasting**
- Federal Communications Commission
- Wine**
- Alcohol, Tobacco and Firearms Bureau

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

- FOR:** Any person who uses the Federal Register and Code of Federal Regulations.
- WHO:** The Office of the Federal Register.
- WHAT:** Free public briefings (approximately 2 1/2 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
 2. The relationship between the Federal Register and Code of Federal Regulations.
 3. The important elements of typical Federal Register documents.
 4. An introduction to the finding aids of the FR/CFR system.
- WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

ATLANTA, GA

- WHEN:** Nov. 21; at 1 pm.
Nov. 22; at 9 am. (identical session)
- WHERE:** Room LP-7,
Richard B. Russell Federal Building,
75 Spring Street, SW., Atlanta, GA.
- RESERVATIONS:** Deborah Hogan,
Atlanta Federal Information Center.
Before Nov. 12: 404-221-2170
On or after Nov. 12: 404-331-2170

FUTURE WORKSHOPS: Additional workshops are scheduled bimonthly in Washington and on an annual basis in Federal regional cities. The January 1986 Washington, D.C. workshop will include facilities for the hearing impaired. Dates and locations will be announced later.

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Title 3—

Proclamation 5396 of October 23, 1985

The President

A Time of Remembrance, 1985

By the President of the United States of America

A Proclamation

The problem of terrorism has become an international concern that knows no boundaries—religious, racial, political, or national. Thousands of men, women, and children have died at the hands of terrorists in nations around the world, and the lives of many more have been blighted by the fear and grief that terrorist attacks have caused to peace-loving peoples. Today, unfortunately, terrorism continues to claim many innocent lives.

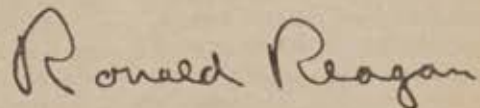
Recent events in the Middle East, including the piratic seizure of the ACHILLE LAURO and the brutal murder of Leon Klinghoffer, only serve to remind us of the intolerable threat from terrorists. All Americans share the sorrow of the families of their victims, and we are determined that those responsible be brought to justice.

October 23 is the second anniversary of the date on which the largest number of Americans was killed in a single act of terrorism—the bombing of the United States compound in Beirut, Lebanon on October 23, 1983, in which 241 United States servicemen lost their lives. These brave soldiers died defending our cherished ideals of freedom and peace. It is appropriate that we honor these men and all other victims of terrorism. Let us also offer our profound condolences to the families and friends of the victims of these unprovoked and contemptible acts of violence.

The Congress, by Senate Joint Resolution 104, has designated October 23, 1985, as "A Time of Remembrance" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim October 23, 1985, as A Time of Remembrance. I urge all Americans to take time to reflect on the sacrifices that have been made in the pursuit of peace and freedom.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-third day of October, in the year of our Lord nineteen hundred and eighty-five, and of the Independence of the United States of America the two hundred and tenth.



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Rules and Regulations

Federal Register

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 85-382]

Oriental Fruit Fly

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document amends the "Domestic Quarantine Notices" by adding "Oriental Fruit Fly" regulations. These regulations quarantine portions of Los Angeles and Orange Counties in California because of the Oriental fruit fly, and restrict the interstate movement of regulated articles from the quarantined portions of Los Angeles and Orange Counties. This document is necessary on an emergency basis to prevent the artificial spread of the Oriental fruit fly into noninfested areas of the United States.

DATES: Effective date of this interim rule October 18, 1985. Written comments concerning this interim rule must be received on or before December 23, 1985.

ADDRESSES: Written comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Federal Building, Room 728, 6505 Belcrest Road, Hyattsville, Maryland 20782. Comments should state that they are in response to Docket Number 85-382. Written comments received may be inspected at Room 728, Federal Building, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: B. Glen Lee, Assistant Director of the National Program Planning Staff in charge of the Survey and Emergency

Response Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 611 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-6365.

SUPPLEMENTARY INFORMATION:

Background

This document amends the "Domestic Quarantine Notices" in 7 CFR Part 301 by adding "Oriental Fruit Fly" regulations (referred to below as the regulations). These regulations quarantine a portion of Los Angeles and Orange Counties in California because of the Oriental fruit fly, and restrict the interstate movement of regulated articles from the quarantined portions of Los Angeles and Orange Counties.

The Oriental fruit fly, *Dacus dorsalis* (Hendel), is a very destructive pest of numerous fruits (especially citrus fruits), nuts, vegetables, and berries. This pest can cause serious economic losses. Heavy infestations can result in complete loss of such crops. Its short life cycle permits the rapid development of serious outbreaks.

Recent trapping surveys have established that portions of Los Angeles and Orange Counties in California are infested with the Oriental fruit fly. The Oriental fruit fly is not known to occur anywhere else in the continental United States.

Officials of the United States Department of Agriculture (USDA) and officials of State and county agencies in California have begun an intensive Oriental fruit fly survey and eradication program in the infested areas in California. Also, as explained below, California has taken action to impose restrictions on the intrastate movement of certain articles from the quarantined areas in order to prevent the artificial spread of the Oriental fruit fly within California. However, it is also necessary to impose restrictions on the interstate movement of certain articles from the quarantined areas in order to prevent the artificial spread of the Oriental fruit fly to noninfested areas in other States. Accordingly, this document establishes Federal regulations for the purpose of preventing the artificial spread of the Oriental fruit fly. These regulations are described below by section.

Section 301.93

Section 301.93 prohibits any common carrier or other person from moving any regulated article interstate from any quarantined areas except in accordance with conditions prescribed in the regulations. For informational purposes, a footnote (footnote 1) has been added to reference the authority of an inspector to stop and inspect persons and means of conveyance, and to seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of regulated articles as provided in section 10 of the Plant Quarantine Act (7 U.S.C. 164a) and section 105 and 107 of the Federal Plant Pest Act (7 U.S.C. 150dd, 150ff).

Definitions (Section 301.93-1)

Section 301.93-1 contains definitions of the following terms: "Certificate," "Compliance Agreement," "Deputy Administrator," "Infestation," "Inspector," "Interstate," "Limited permit," "Moved," "Movement or move," "Oriental fruit fly," "Person," "Plant Protection and Quarantine," "Quarantined area," "Regulated article," and "State." These terms are defined in accordance with definitions and authority set forth in the Plant Quarantine Act (7 U.S.C. 151 *et seq.*) and the Federal Plant Pest Act (7 U.S.C. 150aa *et seq.*).

Regulated Articles (Section 301.93-2)

The regulations impose conditions on the interstate movement of those articles which present a significant risk of spreading the Oriental fruit fly if moved without restrictions from quarantined areas into or through noninfested areas. Such articles are designated as regulated articles. Regulated articles are prohibited from moving interstate from quarantined areas except in accordance with conditions specified in §§ 301.93-4 through 301.93-10.

Section 301.93-2 designates the following articles as regulated articles:

- (a) The following fruits, nuts, vegetables and berries:
- Akia (*Wikstromia phylloaeifolia*)
- Alexander laurel (*Calophyllum inophyllum*)
- Apple (*Malus sylvestris*)
- Apricot (*Prunus armeniaca*)
- Avocado (*Persea americana*)
- Banana
- (*Musa paradisiaca* var. *sapientum*)
- (*Musa x paradisiaca*)
- Banana, dwarf (*Musa nana*)

Barbados cherry (*Malpighia glabra*)
 Bell pepper (*Capsicum frutescens grossum*)
 Brazil cherry (*Eugenia dombeyi*)
 Breadfruit (*Artocarpus altilis*)
 Caimitillo (*Chrysophyllum oliviforme*)
 Cashew (*Anacardium occidentale*)
 Cactus (*Cereus coarulescens*)
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 Cherry, Catalina (*Prunus ilicifolia*)
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 Chili (*Capsicum frutescens* var. *longum*)
 Coffee, Arabian (*Coffea arabica*)
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 Cucumber (*Cucumis sativas*)
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 Date palm (*Phoenix dactylifera*)
 Dragon tree (*Dracena draco*)
 Eggfruit tree (*Pouteria campechiana*)
 Elengi tree (*Mimusops elengi*)
 Fig (*Ficus carica*)
 Gourka (*Carcinia celebica*)
 Granadilla, sweet (*Passiflora ligularis*)
 Grape (*Vitis* spp.)
 Grapefruit (*Citrus paradisi*)
 Guava
 (*Psidium guajava*)
 (*P. littorale*)
 (*P. cattleianum*)
 Imbu (*Spondias tuberosa*)
 Jackfruit (*Artocarpus heterophyllus*)
 Jerusalem cherry (*Solanum pseudocapsicum*)
 Kitembilla (*Dovyalis hebecarpa*)
 Kumquat (*Fortunella japonica*)
 Laurel (*Calophyllum inophyllum*)
 Lemon (*Citrus limon*)
 Lime (*Citrus aurantifolia*)
 Longan (*Euphoria longan*)
 Loquat (*Eriobotrya japonica*)
 Lychee nut (*Lychee chinensis*)
 Malay apple (*Eugenia malaccensis*)
 Mammea apple (*Mammea americana*)
 Mandarin orange (*Citrus reticulata*)
 (tangerine)
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 Mock orange (*Murraya exotica*)
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 Oriental bush red pepper (*Capsicum frutescens abbreviatum*)
 Otaheite apple (*Spondias dulcis*)
 Palm, syrup (*Jubaea spectabilis*)
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 Pummelo (*Citrus grandis*)
 Quince (*Cydonia oblonga*)
 Rose apple (*Eugenia jambos*)
 Sandalwood (*Santalum paniculatum*)
 Sandalwood, white (*Santalum album*)
 Santol (*Sandericum koetjape*)
 Sapodilla (*Manilkara zapota*)
 Sapodilla, chiku (*Achras zapota*)
 Sapota, white (*Casimiroa edulis*)
 Seagrape (*Coccoloba uvifera*)
 Sour orange (*Citrus aurantium*)
 Soursop (*Annona muricata*)
 Star apple (*Chrysophyllum calnito*)
 Surinam cherry (*Eugenia uniflora*)
 Tomato (*Lycopersicon esculentum*)
 Tropical almond
 (*Terminalia catappa*)
 (*Terminalia chebula*)
 Velvet apple (*Diospyros discolor*)
 Walnut (*Juglans hindsii*)
 Walnut, English (*Juglans regia*)
 Wampi (*Citrus lansium*)
 West Indian cherry (*Malpighia punicifolia*)
 Ylang-Ylang (*Cananga odorata*)

Except that the list does not include any fruits, nuts, vegetables, or berries which are canned or that have been frozen below 17.8 °C. (0 °F.):

(b) Soil within the drip area of plants which produce the fruits, nuts, vegetables, or berries listed in paragraph (a); and

(c) Any other product, article, or means of conveyance, of any character whatsoever, not covered by paragraph (a) or (b) of this section, when it is determined by an inspector that it presents a risk of spread of the Oriental fruit fly and the person in possession thereof has actual notice that the product, article, or means of conveyance is subject to the restrictions of this subpart.

Articles that are canned or that have been frozen below 17.8 °C. (0 °F.) are not included as regulated articles since the Oriental fruit fly could not survive under such conditions.

Based on research and experience, the articles listed in § 301.93-2 (a) and (b) as regulated articles are those articles that are known to present a significant risk of causing the artificial spread of the Oriental fruit fly. Paragraph (c) sets forth criteria for designating other products, articles, or means of conveyance as regulated articles on an emergency basis if found to present a risk of spreading the Oriental fruit fly. These articles would have to be determined by an inspector on a case-by-case basis since it cannot be anticipated specifically which other products, articles, or means of conveyance, if any, would present such a risk. There is authority to regulate such products, articles, or means of conveyance on an emergency basis under sections 105 and 106 of the Federal Plant Pest Act. If it appears that these additional products, articles, or

means of conveyance generally present a risk of spreading Oriental fruit fly, an amendment to this rule to include such items in the list of regulated articles will be considered.

Quarantined Areas (Section 301.93-3)

As stated in § 301.93-3(a), it is necessary to designate as quarantined areas, areas in which the Oriental fruit fly has been found, areas in which the Deputy Administrator has reason to believe the Oriental fruit fly is present, and areas deemed necessary to regulate because of their proximity to the Oriental fruit fly or their inseparability for quarantine enforcement purposes from localities where Oriental fruit flies have been found.

Also, § 301.93-3(a) further provides that less than an entire State will be designated as a quarantined area only if the Deputy Administrator determines that (1) the State has adopted and is enforcing a quarantine or regulation which imposes restrictions on the intrastate movement of the regulated articles which are substantially the same as those which are imposed with respect to the interstate movement of such articles under the regulations; and (2) the designation of less than the entire State as a quarantined area will otherwise be adequate to prevent the artificial interstate spread of the Oriental fruit fly. This would not appear to lessen protection against the spread of the Oriental fruit fly compared to the designation of the entire State as a quarantined area. It appears that such State activities would help confine infestations to the quarantined areas and eliminate the need for designating larger portions of a State as quarantined areas.

In accordance with the criteria discussed above, it is necessary to designate as quarantined areas an area in Los Angeles and Orange Counties in California and a separate area solely in Los Angeles County in California. These areas are as follows:

(1) That portion of Los Angeles and Orange Counties lying within the following boundaries: Beginning at the intersection of Artesia Boulevard and Atlantic Avenue; then southerly along said avenue to its intersection with Ocean Boulevard; then due south along an imaginary line from said intersection to the Pacific Ocean coastline; then southeasterly along said coastline to the Los Angeles-Orange County line; then easterly along an imaginary line to the intersection of the Pacific Coast Highway and Main Street; then northerly along said street to its intersection with Bolsa Avenue; then easterly along said avenue to its intersection with Valley View Avenue; then northerly along Valley View Avenue to its intersection

with Bolsa Avenue; then easterly along said avenue to its intersection with Bolsa Chica Road; then northerly along said road to its intersection with Calley View Avenue; then northerly along said avenue to its intersection with Artesia Boulevard; then westerly along said boulevard to the point of beginning.

(2) That portion of Los Angeles County lying within the following boundaries: Beginning at the point where State Highway 2 (Glendale Freeway) intersects with Interstate Highway 210; then southeasterly along Interstate Highway 210 to its intersection with Linda Vista Avenue; then southerly along said avenue to its intersection with Colorado Boulevard; then easterly along said boulevard to its intersection with Arroyo Boulevard; then southerly along Arroyo Boulevard to its intersection with State Highway 110; then southeasterly along said highway to its intersection with Academy Road; then northwesterly along said road to its intersection with Morton Avenue; then southwesterly along said avenue to its intersection with Sunset Boulevard; then northwesterly along said boulevard to its intersection with Silverlake Boulevard; then southwesterly along Silverlake Boulevard to its intersection with U.S. Highway 101; then northwesterly along said highway to its intersection with Vine Street; then northerly along an imaginary line from said intersection to the intersection of State Highway 134 and Buena Vista Street; then northwesterly along said street to its intersection with Kenneth Road, then easterly along an imaginary line from said intersection to the point of beginning.

The Oriental fruit fly has been found only in these areas in California. Also, California has adopted and is enforcing regulations imposing restrictions on the interstate movement of the regulated articles which are substantially the same as those which are imposed with respect to the interstate movement of such articles under this subpart, and there does not appear to be any reason for designation of any areas in California as quarantined areas other than those areas specified above.

Section 301.93-3(b) provides for the temporary designation of an area as a quarantined area without publication in the Federal Register for a short period of time if there is a basis for listing the area as a quarantined area under § 301.93-3(a) and if the owner or person in possession thereof is given written notice of such action. This is necessary in order to prevent further artificial spread of the Oriental fruit fly until a document imposing such requirements could be published in the Federal Register.

Section 301.93-4

Section § 301.93-4(a) allows regulated articles to be moved interstate from a quarantined area if accompanied by a certificate or limited permit issued and attached in accordance with § 301.93-5

and § 301.93-8, and also allows regulated articles to be moved interstate from a quarantined area without a certificate under certain circumstances. The criteria for the issuance of a certificate and limited permit are set forth in § 301.93-5 and § 301.93-10, and are discussed below.

Section 301.93-4(b) allows a regulated article to be moved interstate from a quarantined area without a certificate or limited permit, if:

- (1) The article originated outside of any quarantined area and is moved directly through (without stopping except for brief refueling, or for normal traffic conditions, such as traffic lights or stop signs) the quarantined area in an enclosed vehicle or is completely enclosed by a covering adequate to prevent access by Oriental fruit flies (such as canvas, plastic, or closely woven cloth) while moving through the quarantined area, and
- (2) The point of origin of the article is clearly indicated by shipping documents and its identity has been maintained.

These requirements would be adequate to ensure that the regulated articles would not become infested with the Oriental fruit fly while moving through a quarantined area. These requirements would also be adequate to ensure that the identity of such articles is maintained while moving through a quarantined area.

Section 301.93-4(c) provides that a regulated article may be moved interstate from a quarantined area without a certificate, if:

- (1) Moved by the United States Department of Agriculture for experimental or scientific purposes;
- (2) Moved pursuant to a permit issued by the Deputy Administrator;
- (3) Moved in accordance with conditions specified on the permit and found by the Deputy Administrator to be adequate to prevent the dissemination of the Oriental fruit fly, i.e., conditions of treatment, processing, shipment, disposal; and
- (4) Moved with a tag or label securely attached to the outside of the container containing the article or securely attached to the article itself if not in a container, and with such tag or label bearing a permit number corresponding to the number of the permit issued for such article.

These requirements are in accord with the intent of the Plant Quarantine Act and the Federal Plant Pest Act to allow provisions for movement of articles by the Department for experimental or scientific purposes pursuant to a permit. The conditions for movement are required to be specified on the permit in order to assure that they will be understood and followed.

In § 301.93-4, a footnote (footnote 2) is added to remind persons that all other applicable Federal domestic plant

quarantines and regulations must also be met.

Section 301.93-5

Section 301.93-5 explains the conditions for issuing a certificate or limited permit. Regulated articles accompanied by a certificate can be moved interstate to any destination. Limited permits are issued for regulated articles when the Department has determined that, because of a possible pest risk, such articles may be safely moved interstate only subject to further restrictions, e.g., movement to limited areas, movement for limited purposes.

Section 301.93-5(a) provides that a certificate shall be issued by an inspector for the interstate movement of a regulated article if the inspector:

- (1)(i) Determines that it has been treated under the direction of an inspector in accordance with § 301.93-10; or
- (ii) Determines, based on inspection of the premises of origin, that the premises are free from Oriental fruit fly and the article has not been exposed to Oriental fruit fly; or
- (iii) Determines, based on inspection of the article, that it is free of Oriental fruit fly; and
- (2) Determines that it is to be moved in compliance with any additional emergency conditions necessary to prevent the spread of the Oriental fruit fly pursuant to section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd);² and
- (3) Determines that it is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to such articles.

These provisions would be adequate to ensure that the articles are free of Oriental fruit fly.

A footnote (footnote 3) is added which explains that USDA can, pursuant to section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd), take emergency actions against any article moving into or through the United States or interstate, or which has been moved into the United States or interstate, and which is believed to be infested or infected by plant pests.

² Section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd) provides, among other things, that the Secretary of Agriculture may, whenever he deems it necessary as an emergency measure in order to prevent the dissemination of any plant pest new to or not theretofore known to be widely prevalent or distributed within and throughout the United States, seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of, in such manner as he deems appropriate, any product or article of any character whatsoever, or means of conveyance, which is moving into or through the United States or interstate, and which he has reason to believe is infested or infected by or contains any such plant pest; or which has moved into the United States or interstate, and which he has reason to believe was infested or infected by or contained any such plant pest at the time of such movement.

Section 301.93-5(b) provides that a limited permit shall be issued by an inspector for the interstate movement of a regulated article if the inspector:

(1) Determines, in consultation with the Deputy Administrator, that it is to be moved to a specified destination for specified handling, utilization, or processing (such destination and other conditions to be specified in the limited permit), and when, upon evaluation of all of the circumstances involved in each case, it is determined that such movement will not result in the spread of the Oriental fruit fly because life stages of the pest will be destroyed by such specified handling, utilization, or processing;

(2) Determines that it is to be moved in compliance with any additional emergency conditions necessary to prevent the spread of the Oriental fruit fly pursuant to section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd); and

(3) Determines that it is eligible for such movement under all Federal domestic plant quarantines and regulations applicable to such articles.

Section 301.93-5(c) allows any person who has entered into and is operating under a compliance agreement to execute and issue a certificate or limited permit for the interstate movement of a regulated article once an inspector has made an initial determination that such article is eligible for a certificate or limited permit in accordance with § 301.93-5 (a) or (b). These initial determinations concerning the eligibility of regulated articles for issuance of a certificate or limited permit are limited to inspectors because of their nature and complexity.

A footnote (footnote 4) is added for informational purposes to indicate how to contact inspectors for obtaining inspection services.

Also, § 301.93-5(d) contains provisions for the withdrawal of a certificate or limited permit by an inspector upon a determination that the holder thereof has not complied with conditions for the use of the document. This section also contains provisions for notifying the holder of the reasons for the withdrawal and provisions for holding a hearing if there is any conflict concerning any material fact.

Section 301.93-6

Section 301.93-6 provides for the issuance and cancellation of compliance agreements. Compliance agreements can be entered into by any person engaged in the business of growing, handling, or moving regulated articles who agrees in writing to comply with the regulations and any conditions imposed pursuant thereto. Compliance agreements are provided for the convenience of persons who, because of their business, are involved in frequent shipments of

regulated articles from quarantined areas and are designed to insure that persons issuing certificates and limited permits are knowledgeable with respect to the requirements of the regulations and have agreed to comply with them.

Section 301.93-6 also provides that a compliance agreement may be cancelled by an inspector supervising its enforcement whenever the inspector finds that a person who has entered into such an agreement has failed to comply with any of the provisions of the regulations or any conditions imposed pursuant thereto. This section also contains provisions for notifying the holder of the compliance agreement of the reasons for cancellation and for holding a hearing to resolve any conflict concerning any material fact. A footnote (footnote 5) is added to explain where compliance agreement forms can be obtained.

Sections 301.93-7, 301.93-8 and 301.93-9

Section 301.93-7 provides that any person who desires a certificate or limited permit to move regulated articles should request inspection by an inspector as far in advance as possible (no less than 48 hours before the desired movement).

Section 301.93-8 requires the certificate or limited permit issued for the movement of the regulated article to be attached to the regulated article, or to a container carrying the regulated article, or to the accompanying waybill or other shipping document during the interstate movement.

These provisions of § 301.93-7 and § 301.93-8 are necessary for enforcement purposes and to ensure that persons desiring inspection services can arrange for them before the intended movement date.

Section 301.93-9 explains the Department's policy that services of an inspector needed in order for a person to comply with the provisions of the regulations are provided without cost during normal business hours, but that any other incidental costs or charges shall not be the responsibility of the Department.

Section 301.93-10

Section 301.93-10 set forth treatment schedules for certain regulated articles that must be met if such articles are to be certified prior to movement as provided in § 301.93-4. Based on research it has been determined that these treatments would be adequate to destroy the Oriental fruit fly with little or no effect on the regulated article.

The treatment schedules for regulated articles in § 301.93-10 are as follows:

(a) Avocado:

Fumigation with methyl bromide at normal atmospheric pressure with 32 g/m³ for 2½ hours at 21 °C. (70 °F.) or above followed by refrigeration for 7 days at 7.22 °C. (45 °F.) or below. The 7 day period may include up to 24 hours precooling time. Time between fumigation and start of cooling shall not exceed 24 hours, but must include at least 30 minutes aeration.

(b) Tomato:

Fumigation with methyl bromide at normal atmospheric pressure with 32 g/m³ for 3½ hours at 21 °C. (70 °F.) or above.

(c) Papaya, pepper and tomato:

Heat the article by saturated water vapor at 44.44 °C. (112 °F.) until approximate center of article reaches 44.44 °C. (112 °F.), and maintain at 44.44 °C. (112 °F.) for 8½ hours, then immediately cool.

Note.—Commodities should be tested by the shipper at the 44.44 °C. (112 °F.) temperature to determine each commodity's tolerance to the treatment before commercial treatments are attempted. Pretreatment conditioning is optional. Such conditioning is the responsibility of the shipper and would be conducted in accordance with procedures the shipper believes necessary. It is common to perform pretreatment conditioning. For example, it is the practice to condition eggplant at 43.30 °C. (110 °F.) at 40 percent relative humidity for 6 to 8 hours.

(d) Apple, apricot, cherry, fig, grape, grapefruit, lemon, nectarine, peach, pear, plum, pomegranate and prickly pear:

Fumigation with 32 g/m³ methyl bromide at 21 °C. (70 °F.) or above (chamber load not to exceed 80 percent of volume), and at normal atmospheric pressure, followed by refrigeration, as set forth below.

Fumigation exposure time	Refrigeration
2 hours	4 days at 0.55°-2.7°C. (33°-37°F.) or 11 days at 3.33°-8.3°C. (38°-47°F.)
2½ hours	4 days at 2.33°-4.44°C. (38°-40°F.) or 6 days at 5.0°-8.33°C. (41°-47°F.) or 10 days at 8.88°-13.33°C. (48°-56°F.)
3 hours	3 days at 6.11°-8.33°C. (43°-47°F.) or 6 days at 8.88°-13.33°C. (48°-56°F.)

Minimum concentrations for above fumigations.

(25 g minimum gas concentration at ½ hr.)

(18 g minimum gas concentration at 2 or 2½ hrs.)

(17 g minimum gas concentration at 3 hrs.)

Aerate all fruit at least 2 hours following fumigation. Time lapse between fumigation and start of cooling shall not exceed 24 hours.

Note.—Some varieties of fruit may be injured by methyl bromide. Shippers should test treat before making commercial shipments.

(e) Soil:

Soil within the drip area of plants which are producing or have produced the fruits, nuts, vegetables and berries listed in § 301.93-2(a): Apply diazinon at the rate of 5 pounds actual ingredient per acre to the soil within the drip area with sufficient water to wet the soil to at least a depth of ½ inch. Both immersion and pour-on treatment procedures are acceptable.

Emergency Action

Harvey L. Ford, Deputy Administrator of the Animal and Plant Health Inspection Service for Plant Protection and Quarantine, has determined that an emergency situation exists which warrants publication of this interim rule without prior opportunity for a public comment period. Due to the possibility that the Oriental fruit fly could be spread artificially to noninfested areas of the United States, a situation exists requiring immediate action to help control the spread of this pest.

Further, pursuant to the administrative procedure provisions of 5 U.S.C. 553, it is found upon good cause that prior notice and other public procedure with respect to this interim rule are impracticable and contrary to the public interest; and good cause is found for making this interim rule effective upon signature. Comments will be solicited for 60 days after publication of this document, and a final document discussing comments received and any amendments required will be published in the *Federal Register* as soon as possible.

Executive Order 12291 and Regulatory Flexibility Act

This rule is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this rule will have an effect on the economy of less than 100 million dollars; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this rulemaking action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

This amendment affects the interstate movement of regulated articles from portions of Los Angeles and Orange Counties in California. The regulated articles that are affected by this interim rule represent significantly less than one percent of such articles in the United States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V).

Paperwork Reduction Act

The regulations in this subpart contain no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural Commodities, Oriental Fruit Fly, Plant Diseases, Plant Pests, Plants (Agriculture), Quarantine, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, 7 CFR Part 301 is amended as follows:

1. The authority citation for Part 301 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff; 161, 162, and 164-167; 7 CFR 2.17, 2.51, and 371.2(c).

2. Part 301 is amended by adding a new "Subpart—Oriental Fruit Fly" (§§ 301.93 through 301.93-10) to read as follows:

Subpart—Oriental Fruit Fly

- Sec.
- 301.93 Restrictions on interstate movement of regulated articles.
 - 301.93-1 Definitions.
 - 301.93-2 Regulated articles.
 - 301.93-3 Quarantined areas.
 - 301.93-4 Conditions governing the interstate movement of regulated articles from quarantined areas.
 - 301.93-5 Issuance and cancellation of certificates and limited permits.
 - 301.93-6 Compliance agreement and cancellation thereof.
 - 301.93-7 Assembly and inspection of regulated articles.
 - 301.93-8 Attachment and disposition of certificates and limited permits.
 - 301.93-9 Costs and charges.
 - 301.93-10 Treatments.

Subpart—Oriental Fruit Fly**§ 301.93 Restrictions on interstate movement of regulated articles.¹**

No common carrier or other person shall move interstate from any

¹ Any properly identified inspector is authorized to stop and inspect persons and means of conveyance, and to seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise

quarantined area any regulated article except in accordance with the conditions prescribed in this subpart.

§ 301.93-1 Definitions.

Terms used in the singular form in this subpart shall be construed as the plural and vice versa, as the case may demand. The following terms, when used in this subpart, shall be construed, respectively, to mean:

Certificate. A document which is issued for a regulated article by an inspector or by a person operating under a compliance agreement, and which represents that such article is eligible for interstate movement to any destination.

Compliance agreement. A written agreement between Plant Protection and Quarantine and a person engaged in the business of growing, handling, or moving regulated articles, wherein the person agrees to comply with the provisions of this subpart and any conditions imposed pursuant thereto.

Deputy Administrator. The Deputy Administrator of the Animal and Plant Health Inspection Service for Plant Protection and Quarantine, or any officer or employee of the Department to whom authority to act in his or her stead has been or may hereafter be delegated.

Infestation. The presence of the Oriental fruit fly or the existence of circumstances that make it reasonable to believe that the Oriental fruit fly is present.

Inspector. Any employee of Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, or other person, authorized by the Deputy Administrator in accordance with law to enforce the provisions of this subpart.

Interstate. From any State into or through any other State.

Limited permit. A document which is issued for a regulated article by an inspector or by a person operating under a compliance agreement, and which represents that such regulated article is eligible for interstate movement in accordance with § 301.93-5(b).

Moved. Shipped, offered for shipment to a common carrier, received for transportation or transported by a common carrier, or carried, transported, moved, or allowed to be moved by any means.

Movement or move. The act of shipping, offering for shipment to a common carrier, receiving for transportation or transporting by a

dispose of regulated articles as provided in section 10 of the Plant Quarantine Act (7 U.S.C. 164a) and sections 105 and 107 of the Federal Plant Pest Act (7 U.S.C. 150dd, 150ff).

common carrier, or carrying, transporting, moving, or allowing to be moved by any means.

Oriental fruit fly. The insect known as Oriental fruit fly (*Dacus dorsalis* (Hendel)) in any stage of development.

Person. Any individual, partnership, corporation, company, society, association, or other organized group.

Plant Protection and Quarantine. The organizational unit within the Animal and Plant Health Inspection Service, United States Department of Agriculture delegated responsibility for enforcing provisions of the Plant Quarantine Act, the Federal Plant Pest Act, and related legislation, and quarantines and regulations promulgated thereunder.

Quarantined area. Any State, or any portion thereof, listed in § 301.93-3(c) or otherwise designated as a quarantined area in accordance with § 301.93-3(b).

Regulated article. Any article listed in § 301.93-2 or otherwise designated as a regulated article in accordance with § 301.93-2(c).

State. Each of the several States of the United States, the District of Columbia, Guam, Northern Mariana Islands, Puerto Rico, the Virgin Islands of the United States, and all other Territories and Possessions of the United States.

§ 301.93-2 Regulated articles.

(a) The following fruits, nuts, vegetables and berries:

Akai (*Wikstroemia phyllaefolia*)
Alexander laurel (*Calophyllum inophyllum*)
Apple (*Malus sylvestris*)
Apricot (*Prunus armeniaca*)
Avocado (*Persea americana*)
Banana
(*Musa paradisiaca* var. *sapientum*)
(*Musa x paradisiaca*)
Banana, dwarf (*Musa nana*)
Barbados cherry (*Malpighia glabra*)
Bell pepper (*Capsicum frutescens* *grossum*)
Brazil cherry (*Eugenia dombeyi*)
Breadfruit (*Artocarpus altilis*)
Caimitillo (*Chrysophyllum oliviforme*)
Cashew (*Anacardium occidentale*)
Cactus (*Cereus coarulescens*)
Cherimoya (*Annona cherimola*)
Cherry, Catalina (*Prunus ilicifolia*)
Cherry, Portuguese (*P. lusitanica*)
Chili (*Capsicum frutescens* var. *longum*)
Coffee, Arabian (*Coffea arabica*)
Country gooseberry (*Averrhoa carambola*)
Cucumber (*Cucumis sativus*)
Custard apple (*Annona reticulata*)
Date palm (*Phoenix dactylifera*)
Dragon tree (*Dracena dracaena*)
Eggfruit tree (*Pouteria campechiana*)
Elengi tree (*Mimusops elengi*)
Fig (*Ficus carica*)
Gourka (*Garcinia celebica*)
Granadilla, sweet (*Passiflora ligularis*)
Grape (*Vitis* spp.)
Grapefruit (*Citrus paradisi*)
Guava
(*Psidium guajava*)
(*P. littorale*)

(*P. cattleianum*)
Imbu (*Spondias tuberosa*)
Jackfruit (*Artocarpus heterophyllus*)
Jerusalem cherry (*Solanum pseudocapsicum*)
Kitembilla (*Dovyalis hebecarpa*)
Kumquat (*Fortunella japonica*)
Laurel (*Calophyllum inophyllum*)
Lemon (*Citrus limon*)
Lime (*Citrus aurantifolia*)
Longan (*Euphoria longan*)
Loquat (*Eriobotrya japonica*)
Lychee nut (*Lychee chinensis*)
Malay apple (*Eugenia malaccensis*)
Mammee apple (*Mammea americana*)
Mandarin orange
(*Citrus reticulata*)
(tangerine)
Mango (*Mangifera indica*)
Mangosteen (*Garcinia mangostana*)
Mock orange (*Murraya exotica*)
Mulberry (*Morus nigra*)
Myrtle, downy rose (*Rhodomyrtus tomentosa*)
Natal plum (*Carissa grandiflora*)
Nectarine (*Prunus persica* var. *nectarina*)
Oleander, yellow (*Thevetia peruviana*)
Orange, calamondin (*Citrus mitis* and *C. japonica*)
Orange, Chinese (*Citrus japonica hazara*)
Orange, king (*Citrus nobilis*)
Orange, sweet (*Citrus sinensis*)
Orange, Unshu (*Citrus unshu*)
Oriental bush red pepper (*Capsicum frutescens abbreviatum*)
Otaheite apple (*Spondias dulcis*)
Palm, syrup (*Jubaea spectabilis*)
Papaya (*Carica papaya*)
Passionflower (*Passiflora edulis*)
Passionflower, softleaf (*Passiflora mollissima*)
Passionfruit (*Passiflora edulis flavicarpa*)
(yellow lillikoi)
Peach (*Prunus persica*)
Pear (*Pyrus communis*)
Pepino (*Solanum muricatum*)
Pepper, sweet (*Capsicum frutescens* var. *grossum*)
Persimmon, Japanese (*Diospyros kaki*)
Pineapple guava (*Feijoa sellowiana*)
Plum (*Prunus americana*)
Pomegranate (*Punica granatum*)
Prickly pear
(*Opuntia megacantha*)
(*Opuntia ficus indica*)
Prune (*Prunus domestica*)
Pummelo (*Citrus grandis*)
Quince (*Cydonia oblonga*)
Rose apple (*Eugenia jambos*)
Sandalwood (*Santalum paniculatum*)
Sandalwood, white (*Santalum album*)
Santol (*Sandericium koetjape*)
Sapodilla (*Manilkara zapota*)
Sapodilla, chiku (*Achras zapota*)
Sapota, white (*Casimiroa edulis*)
Seagrape (*Coccoloba uvifera*)
Sour orange (*Citrus aurantium*)
Soursop (*Annona muricata*)
Star apple (*Chrysophyllum cainito*)
Surinam cherry (*Eugenia uniflora*)
Tomato (*Lycopersicon esculentum*)
Tropical almond
(*Terminalia catappa*)
(*Terminalia chebula*)
Velvet apple (*Diospyros discolor*)
Walnut (*Juglans hindsii*)
Walnut, English (*Juglans regia*)

Wampli (*Citrus lansium*)
West Indian cherry (*Malpighia punicifolia*)
Ylang-Ylang (*Cananga odorata*)

Except that the list does not include any fruits, nuts, vegetables, or berries which are canned or have been frozen below -17.8° C. (0° F.);

(b) Soil within the drip area of plants which produce the fruits, nuts, vegetables, or berries listed in paragraph (a) of this section; and

(c) Any other product, article, or means of conveyance, of any character whatsoever, not covered by paragraphs (a) or (b) of this section, when it is determined by an inspector that it presents a risk of spread of the Oriental fruit fly and the person in possession thereof has actual notice that the product, article, or means of conveyance is subject to the restrictions of this subpart.

§ 301.93-3 Quarantined areas.

(a) Except as otherwise provided in paragraph (b) of this section, the Deputy Administrator shall list as a quarantined area in paragraph (c) of this section, each State, or each portion thereof, in which the Oriental fruit fly has been found by an inspector, or in which the Deputy Administrator has reason to believe that the Oriental fruit fly is present, or each portion of a State which the Deputy Administrator deems necessary to regulate because of its proximity to the Oriental fruit fly or its inseparability for quarantine enforcement purposes from localities in which the Oriental fruit fly occurs. Less than an entire State will be designated as a quarantined area only if the Deputy Administrator determines that:

(1) The State has adopted and is enforcing a quarantine or regulation which imposes restrictions on the intrastate movement of the regulated articles which are substantially the same as those which one imposed with respect to the interstate movement of such articles under this subpart; and

(2) The designation of less than the entire State as a quarantined area will otherwise be adequate to prevent the artificial interstate spread of the Oriental fruit fly.

(b) The Deputy Administrator or an inspector may temporarily designate any nonquarantined area in a State as a quarantined area in accordance with the criteria specified in paragraph (a) of this section for listing such area. Written notice of such designation shall be given to the owner or person in possession of such nonquarantined area, and, thereafter, the interstate movement of any regulated article from such area shall be subject to the applicable

provisions of this subpart. As soon as practicable, such area shall be added to the list in paragraph (c) of this section or such designation shall be terminated by the Deputy Administrator or an inspector, and notice thereof shall be given to the owner or person in possession of the area.

(c) The areas described below are designated as quarantined areas:

California

(1) That portion of Los Angeles and Orange Counties lying within the following boundaries: Beginning at the intersection of Artesia Boulevard and Atlantic Avenue; then southerly along said avenue to its intersection with Ocean Boulevard; then due south along an imaginary line from said intersection to the Pacific Ocean coastline; then southeasterly along said coastline to the Los Angeles-Orange County line; then easterly along an imaginary line to the intersection of the Pacific Coast Highway and Main Street; then northerly along said street to its intersection with Bolsa Avenue; then easterly along said avenue to its intersection with Valley View Avenue; then northerly along Valley View Avenue to its intersection with Bolsa Avenue; then easterly along said avenue to its intersection with Bolsa Chica Road; then northerly along said road to its intersection with Calley View Avenue; then northerly along said avenue to its intersection with Artesia Boulevard; then westerly along said boulevard to the point of the beginning.

(2) That portion of Los Angeles County lying within the following boundaries: Beginning at the point where State Highway 2 (Glendale Freeway) intersects with Interstate Highway 210; then southeasterly along Interstate Highway 210 to its intersection with Linda Vista Avenue; then southerly along said avenue to its intersection with Colorado Boulevard; then easterly along said boulevard to its intersection with Arroyo Boulevard; then southerly along Arroyo Boulevard to its intersection with State Highway 110; then southwesterly along said highway to its intersection with Academy Road; then northwesterly along said road to its intersection with Morton Avenue; then southwesterly along said avenue to its intersection with Sunset Boulevard; then northeasterly along said boulevard to its intersection with Silverlake Boulevard; then southwesterly along Silverlake Boulevard to its intersection with U.S. Highway 101; then northwesterly along said highway to its intersection with Vine Street; then northerly along an imaginary line from said intersection to

the intersection of State Highway 134 and Buena Vista Street; then northwesterly along said street to its intersection with Kenneth Road; then easterly along an imaginary line from said intersection to the point of beginning.

§ 301.93-4 Conditions governing the interstate movement of regulated articles from quarantined areas.²

Any regulated article may be moved interstate from a quarantined area only if moved under the following conditions:

(a) With a certificate or limited permit issued and attached in accordance with §§ 301.93-5 and 301.93-8;

(b) Without a certificate or limited permit, if:

(1) The article originated outside of any quarantined area and is moved directly through (without stopping except for brief refueling, or for normal traffic conditions, such as traffic lights or stop signs) the quarantined area in an enclosed vehicle or is completely enclosed by a covering adequate to prevent access by Oriental fruit flies (such as canvas, plastic, or closely woven cloth) while moving through the quarantined area, and

(2) The point of origin of the article is clearly indicated by shipping documents and its identity has been maintained.

(c) Without a certificate or limited permit, if:

(1) Moved by the United States Department of Agriculture for experimental or scientific purposes;

(2) Moved pursuant to a permit issued by the Deputy Administrator;

(3) Moved in accordance with conditions specified on the permit and found by the Deputy Administrator to be adequate to prevent the dissemination of the Oriental fruit fly, i.e., conditions of treatment, processing, shipment, disposal; and

(4) Moved with a tag or label securely attached to the outside of the container containing the article or securely attached to the article itself if not in a container, and with such tag or label bearing a permit number corresponding to the number of the permit issued for such article.

§ 301.93-5 Issuance and cancellation of certificates and limited permits.

(a) A certificate shall be issued by an inspector for the interstate movement of a regulated article if such inspector:

(1)(i) Determines that it has been treated under the direction of an

inspector in accordance with § 301.93-10; or

(ii) Determines, based on inspection of the premises of origin, that the premises are free from Oriental fruit fly and the article has not been exposed to Oriental fruit fly; or

(iii) Determines, based on inspection of the article, that it is free of Oriental fruit fly; and

(2) Determines that it is to be moved in compliance with any additional emergency conditions necessary to prevent the spread of the Oriental fruit fly pursuant to section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd);³ and

(3) Determines that it is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to such articles.

(b) A limited permit shall be issued by an inspector⁴ for the movement of a regulated article if such inspector:

(1) Determines, in consultation with the Deputy Administrator, that it is to be moved to a specified destination for specified handling, utilization, or processing (such destination and other conditions to be specified in the limited permit), and when upon evaluation of all of the circumstances involved in each case, it is determined that such movement will not result in the spread of the Oriental fruit fly because life stages of the pest will be destroyed by such specified handling, utilization, or processing;

(2) Determines that it is to be moved in compliance with any additional emergency conditions necessary to prevent the spread of the Oriental fruit fly pursuant to section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd); and

(3) Determines that it is eligible for such movement under all other Federal

² Section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd) provides, among other things, that the Secretary of Agriculture may, whenever he deems it necessary as an emergency measure in order to prevent the dissemination of any plant pest new to or not theretofore known to be widely prevalent or distributed within and throughout the United States, seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of, in such manner as he deems appropriate, any product or article of any character whatsoever, or means of conveyance, which is moving into or through the United States or interstate, and which he has reason to believe is infested or infected by or contains any such plant pest; or which has moved into the United States or interstate, and which he has reason to believe was infested or infected by or contained any such plant pest at the time of such movement.

⁴ Inspectors are assigned to local offices of plant protection and quarantine which are listed in telephone directories. Information concerning such local offices may also be obtained from the Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, Federal Building, Hyattsville, Maryland, 20782.

³ Requirements under all other applicable Federal domestic plant quarantines and regulations must also be met.

domestic plant quarantines and regulations applicable to such articles.

(c) Certificates and limited permits for use for movement of regulated articles may be issued by an inspector⁴ or person engaged in the business of growing, handling, or moving regulated articles provided such person is operating under a compliance agreement. Any such person may execute and issue a certificate for the interstate movement of a regulated article if the inspector has made the determination that such article is otherwise eligible for a certificate in accordance with paragraph (a) of this section. Any such person may execute and issue a limited permit for interstate movement of a regulated article when the inspector has made the determination that such article is eligible for a limited permit in accordance with paragraph (b) of this section.

(d) Any certificate or limited permit which has been issued or authorized may be withdrawn by an inspector orally or in writing, if such inspector determines that the holder thereof has not complied with all conditions under the regulations for the use of such document. If the cancellation is oral, the decision and the reasons for the withdrawal shall be confirmed in writing as promptly as circumstances allow. Any person whose certificate or limited permit has been withdrawn may appeal the decision in writing to the Deputy Administrator within ten (10) days after receiving the written notification of the withdrawal. The appeal shall state all of the facts and reasons upon which the person relies to show that the certificate or limited permit was wrongfully withdrawn. The Deputy Administrator shall grant or deny the appeal, in writing, stating the reasons for such decision, as promptly as circumstances allow. If there is a conflict as to any material fact, a hearing shall be held to resolve such conflict. Rules of practice concerning such a hearing will be adopted by the Deputy Administrator.

§ 301.93-6 Compliance agreement and cancellation thereof.

(a) Any person engaged in the business of growing, handling, or moving regulated articles may enter into a compliance agreement to facilitate the movement of regulated articles under this subpart.⁵ The compliance agreement

shall be a written agreement between a person engaged in such a business and Plant Protection and Quarantine, wherein the person agrees to comply with the provisions of this subpart and any conditions imposed pursuant thereto.

(b) Any compliance agreement may be cancelled orally or in writing by the inspector who is supervising its enforcement whenever the inspector finds that such person has failed to comply with the provisions of this subpart or any conditions imposed pursuant thereto. If the cancellations is oral, the decision and the reasons therefor shall be confirmed in writing, as promptly as circumstances allow. Any person whose compliance agreement has been cancelled may appeal the decision, in writing, within ten (10) days after receiving written notification of the cancellation. The appeal shall state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully cancelled. The Deputy Administrator shall grant or deny the appeal in writing, stating the reasons for such decision, as promptly as circumstances allow. If there is a conflict as to any material fact, a hearing shall be held to resolve such conflict. Rules of practice concerning such a hearing will be adopted by the Deputy Administrator.

§ 301.93-7 Assembly and inspection of regulated articles.

(a) Any person (other than a person authorized to issue certificates or limited permits under § 301.93-5(c)), who desires to move interstate a regulated article accompanied by a certificate or limited permit shall, as far in advance as possible (should be no less than 48 hours before the desired movement), request an inspector⁴ to take necessary action under this subpart prior to movement of the regulated article.

(b) Such article shall be assembled at such point and in such manner as the inspector designates as necessary to comply with the requirements of this subpart.

§ 301.93-8 Attachment and disposition of certificates and limited permits.

(a) A certificate or limited permit required for the interstate movement of a regulated article, at all times during such movement, shall be securely attached to the outside of the container containing the regulated article, securely attached to the article itself if not in a container, or securely attached to the

consignee's copy of the accompanying waybill or other shipping document: *Provided however*, that the requirements of this section may be met by attaching the certificate or limited permit to the consignee's copy of the waybill or other shipping documents only if the regulated article is sufficiently described on the certificate, limited permit, or shipping document to identify such article.

(b) The certificate or limited permit for the movement of a regulated article shall be furnished by the carrier to the consignee at the destination of the shipment.

§ 301.93-9 Costs and charges.

The services of the inspector shall be furnished without cost. The United States Department of Agriculture will not be responsible for any costs or charges incident to inspections or compliance with the provisions of the regulations in this subpart, other than for the services of the inspector.

§ 301.93-10 Treatments.

The treatment schedules for regulated articles are as follows:

(a) *Avocado*: Fumigation with methyl bromide at normal atmospheric pressure with 32 g/m³ for 2½ hours at 21 °C. (70 °F.) or above followed by refrigeration for 7 days at 7.22 °C. (45 °F.) or below. The 7 day period may include up to 24 hours precooling time. Time between fumigation and start of cooling shall not exceed 24 hours, but must include at least 30 minutes aeration.

(b) *Tomato*: Fumigation with methyl bromide at normal atmospheric pressure with 32 g/m³ for 3½ hours at 21 °C. (70 °F.) or above.

(c) *Papaya, pepper and tomato*: Heat the article by saturated water vapor at 44.44 °C. (112 °F.) until approximate center of article reaches 44.44 °C. (112 °F.), and maintain at 44.44 °C. (112 °F.) for 8½ hours, then immediately cool.

Note.—Commodities should be tested by the shipper at the 44.44 °C. (112 °F.) temperature to determine each commodity's tolerance to the treatment before commercial treatments are attempted. Pretreatment conditioning is optional. Such conditioning is the responsibility of the shipper and would be conducted in accordance with procedures the shipper believes necessary. It is common to perform pretreatment conditioning. For example, it is the practice to condition eggplant at 43.30 °C. (110 °F.) at 40 percent relative humidity for 6 to 8 hours.

(d) *Apple, apricot, cherry, fig, grape, grapefruit, lemon, nectarine, peach, pear, plum, pomegranate and prickly pear*: Fumigation with 32 g/m³ methyl bromide at 21 °C. (70 °F.) or above (chamber load not to exceed 80 percent of volume), and at normal atmospheric

⁴ Compliance agreement forms are available without charge from the Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, Federal Building, Hyattsville, MD 20782, and from local offices of the

Plant Protection and Quarantine (Local offices are listed in telephone directories).

pressure, followed by refrigeration, as set forth below.

Fumigation exposure time	Refrigeration
2 hours	4 days at 9.55°-2.7°C (33°-37°F); or 11 days at 3.33°-8.3°C (38°-47°F)
2½ hours	4 days at 3.33°-4.44°C (38°-40°F); or 6 days at 5.0°-8.33°C (41°-47°F); or 10 days at 8.88°-13.33°C (48°-56°F)
3 hours	3 days at 6.11°-8.33°C (43°-47°F); or 6 days at 8.88°-13.33°C (48°-56°F)

Minimum concentration for above fumigations.

(25 g minimum gas concentration at ½ hr.)
(18 g minimum gas concentration at 2 or 2½ hrs.)

(17 g minimum gas concentration at 3 hrs.)

Aerate all fruit at least 2 hours following fumigation. Time lapse between fumigation and start of cooling shall not exceed 24 hours.

Note.—Some varieties of fruit may be injured by methyl bromide. Shippers should test treat before making commercial shipments.

(c) *Soil*: Soil within the drip area of plants which are producing or have produced the fruits, nuts, vegetables and berries listed in § 301.93-2(a): Apply diazinon at the rate of 5 pounds actual ingredient per acre to the soil within the drip area with sufficient water to wet the soil to at least a depth of ½ inch. Both immersion and pour-on treatment procedures are acceptable.

Done at Washington, D.C., this 18th day of October, 1985.

H.L. Ford,

Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 85-25384 Filed 10-23-85; 8:45 am]

BILLING CODE 3410-34-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1204

Administrative Authority and Policy

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: NASA is amending 14 CFR Part 1204 by revising Subpart 14, "Use of NASA Airfield Facilities by Aircraft Not Operated for the Benefit of the Federal Government." This revision updates the procedures and regulations needed to provide for the orderly and controlled use of NASA research facilities that have limited availability for aircraft owned and operated by and for private citizens or companies. This revision also reflects a change in the official name

from the Wallops Flight Center to the Wallops Flight Facility; hours of operation; and the facilities available. This rule also modifies the regulations pertaining to the Shuttle Landing Facility at the Kennedy Space Center in Florida.

These procedures and requirements involve the use of public property and will be applied in agreements entered into by NASA. However, the notice and public procedures of 5 U.S.C. 553 were not followed since these procedures and requirements are determined to be exempt under 5 U.S.C. 553(a)(2) "as a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts."

EFFECTIVE DATE: October 24, 1985.

ADDRESS: Director, Aircraft Management Office, Code NF, NASA Headquarters, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Gerald T. McCarthy, 202-453-1991.

SUPPLEMENTARY INFORMATION: The National Aeronautics and Space Administration has determined that:

1. This rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, since it will not exert a significant impact on a substantial number of small entities.

2. This rule is not a major rule as defined in Executive Order 12291.

List of Subjects in 14 CFR Part 1204

Airports, Authority delegations (Government agencies), Federal buildings and facilities, Government contracts, Government employees, Government procurement, Grant programs: science and technology, Intergovernmental relations, Labor unions, Security measures, Small business, Real estate.

PART 1204—ADMINISTRATIVE AUTHORITY AND POLICY

14 CFR Part 1204 is amended by revising Subpart 1204.14 to read as follows:

Subpart 1204.14—Use of NASA Airfield Facilities by Aircraft Not Operated for the Benefit of the Federal Government

Sec.	
1204.1400	Scope.
1204.1401	Definitions.
1204.1402	Policy.
1204.1403	Available airport facilities.
1204.1404	Requests for use of NASA airfield facilities.
1204.1405	Approving authority.
1204.1406	Procedures in the event of a declared in-flight emergency.
1204.1407	Procedure in the event of an unauthorized use.

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1204.14—Use of NASA Airfield Facilities by Aircraft Not Operated for the Benefit of the Federal Government

§ 1204.1400 Scope.

This Subpart establishes the responsibility and sets forth the conditions and procedures for the use of NASA airfield facilities by aircraft not operated for the benefit of the Federal Government.

§ 1204.1401 Definitions.

For the purpose of this Subpart 1204.14, the following definitions apply:

(a) *NASA airfield facility*. Those aeronautical facilities owned and operated by NASA that consist of the following:

(1) *Shuttle Landing Facility*. The aeronautical facility which is a part of the John F. Kennedy Space Center (KSC), Kennedy Space Center, FL, and is located at 80°41' west longitude and 28°37' north latitude.

(2) *Wallops Airport*. The aeronautical facility which is part of the Wallops Flight Facility (WFF), Wallops Island, VA, and is located at 75°36' west longitude and 37°56' north latitude in the general vicinity of Chincoteague, Virginia.

(b) *Aircraft not operated for the benefit of the Federal Government*. Aircraft which are not owned by the United States Government or aircraft carrying crew members or passengers who do not have official business requiring the use of a NASA airfield facility in the particular circumstance in question.

(c) *Official Business*. Business, in the interest of the U.S. Government, which personnel aboard an aircraft must transact with U.S. Government personnel or organizations at or near a NASA facility. The use of a NASA airfield facility by transient aircraft to petition for U.S. Government business or to obtain clearance, servicing, or other items pertaining to itinerant operations is not considered official business.

(d) *User*. An individual partnership, or corporation owning, operating, or using an aircraft not operated for the benefit of the Federal Government in whose name permission to use a NASA airfield facility is to be requested and granted.

(e) *Hold Harmless Agreement*. An agreement executed by the user by which the user acknowledges awareness of the conditions of the permission to use a NASA airfield facility, assumes any risks connected therewith, and releases the U.S. Government from all liability incurred by the use of such facility.

(f) *Use Permit.* The written permission signed by the authorized approving official to land, take off, and otherwise use a NASA airfield facility. Such use permit may be issued for single or multiple occasions. The specific terms of the use permit and the provisions of this Subpart govern the use which may be made of the airport by aircraft not operated for the benefit of the Federal Government.

(g) *Certificate of Insurance.* A certificate signed by an authorized insurance company representative (or a facsimile of an insurance policy) evidencing that insurance is then in force with respect to any aircraft not operated for the benefit of the Federal Government, the user of which is requesting permission to use a NASA airfield facility (see § 1204.1404(b)).

§ 1204.1402 Policy.

(a) NASA is not engaged in a public or quasi-public enterprise; and, hence, any use of airfield facilities by aircraft not operated for the benefit of the Federal Government shall be within the sole discretion of the approving authorities.

(b) Except in the event of a declared in-flight emergency (see § 1204.1406) or as otherwise determined by an approving authority, aircraft not operated for the benefit of the Federal Government are not permitted to land and otherwise use NASA airfield facilities.

(c) Any use of a NASA airfield facility by aircraft not operated for the benefit of the Federal Government shall be gratuitous and no consideration (monetary or otherwise) shall be exacted or received by NASA for such use. However, each user, as a condition of receiving permission to use such airfield facility, shall agree to become familiar with the physical condition of the airfield; abide by the conditions placed upon such use; subject the aircraft, the user, and those accompanying the user to any requirements imposed by NASA in the interest of security and safety while the aircraft or persons are on a NASA facility; use the facilities entirely at the user's own risk; hold the Federal Government harmless with respect to any and all liabilities which may arise as a result of the use of the facilities; and carry insurance in an amount which is deemed adequate by NASA.

(d) Permission to use a NASA airfield facility will be granted only in accordance with the limitations and procedures established by an approving authority and then only when such use will not compete with another airport in the vicinity which imposes landing fees or other user charges.

(e) In no event, except for an in-flight emergency (see § 1204.1406), will permission to use NASA airfield facilities be granted to an aircraft arriving directly from, or destined for, any location outside the continental United States.

(f) Permission to use NASA airfields may be granted only to those users having the legal capacity to contract and whose aircraft are in full compliance with applicable Federal Aviation Administration or other cognizant regulatory agency requirements.

(g) Permission to use NASA airfields, except in connection with a declared in-flight emergency, will consist of the right to land, park an aircraft, and subsequently take off. NASA is not equipped to provide any other services such as maintenance or fuel and such services will not be provided except following an in-flight emergency.

§ 1204.1403 Available airport facilities.

The facilities available vary at each NASA installation having an airfield. The airport facilities available are:

(a) *Shuttle Landing Facility.*—(1) *Runways.* Runway 15-33 is 15,000 feet long and 300 feet wide with 1,000-foot overruns. The runway is grooved for improved braking under wet conditions.

(2) *Parking Area and Hangar Space.* No hangar space is available. Very limited concrete parking ramp space may be made available for short periods.

(3) *Control Tower.* A temporary control tower is operational at selected times and provides VHF and UHF communications on 126.3 MHz and 284.0 MHz. Times when the tower is operational will be publicized through the Federal Aviation Administration's (FAA) Notice to Airmen (NOTAM) system. At other times an advisory service is operational during normal duty hours. FAA regulations pertaining to the operation of aircraft at airports with an operating control tower (§ 91.87 of this title) will apply. When the tower is not in operation, the FAA regulations pertaining to the operation of aircraft at airports without an operating control tower (§ 91.89 of this title) will apply.

(4) *Navigation aids.* There are no approved navigation aids. A Microwave Scanning Beam Landing System (MSBLS) and a Tactical Airborne Navigation System (TACAN) are installed at the Facility. Runway approach lighting (similar to Cat II ALSF-2) and edge lights are available by prior arrangement.

(5) *Hazards.* There are towers and buildings south and southeast of the facility that could pose hazards to air

navigation. All are marked with obstruction lights.

(6) *Emergency Equipment.* Crash, fire, and rescue (CFR) support will be provided for all multiengine aircraft and for all aircraft weighing over 12,500 pounds during departures and landings.

(b) *Wallops Airport.*—(1) *Runways.* There are three hard surfaced runways in satisfactory condition. The runways and taxiways are concrete and/or asphalt. Runway 10-28 is 8,000 feet long, 200 feet wide with maximum wheel load of 57,500 pounds; runway 04-22 is 8,750 feet long, 150 feet wide with maximum wheel load of 57,500 pounds; and runway 17-35 is 4,820 feet long, 150 feet wide with maximum wheel load of 14,700 pounds.

(2) *Parking Areas and Hangar Space.* No hangar space is available. However, limited concrete parking ramp space is available as directed by the control tower.

(3) *Control Tower.* This control tower is normally in operation from 0800/1600 local time, Monday through Friday only, legal holidays excluded. The tower may be contracted on 126.5 MHz or 394.3 MHz. When the tower is in operation, FAA regulations pertaining to the operation of aircraft at airports with an operating tower (§ 91.87 of this title) will apply. When the tower is not in operation the FAA regulations pertaining to the operation of aircraft at airports without an operating control tower (§ 91.89 of this title) will apply.

(4) *Navigation Aids.* Runway and taxiway lights on runway and taxiway 04-22 and 10-28 only. Specific request must be made of the control tower or Salisbury Flight Service Station to have these lights turned on. Lighted red obstruction lights on all airfield obstructions.

(5) *Physical Hazards.* Numerous towers in airport vicinity up to 241 feet above ground level.

(6) *Emergency Equipment.* Crash, fire, and rescue equipment is normally available on a continuous basis.

(c) *Other Facilities.* No facilities or services other than those described above are available except on an individual emergency basis to any user.

(d) *Status of Facilities.* Change to the status of the KSC and WFF facilities will be published in appropriate current aeronautical publications.

§ 1204.1404 Requests for use of NASA airfield facilities.

(a) Request for use of a NASA airfield, whether on a one time or recurring basis must be in writing and addressed to the appropriate NASA facility, namely:

(1) *Shuttle Landing Facility*—Director of Center Support Operations, Kennedy Space Center, FL 32899.

(2) *Wallops Airport*—Director of Suborbital Projects and Operations, Goddard Space Flight Center, Wallops Flight Facility, Wallops Island, VA 23337.

(b) Such requests will:

(1) Identify the prospective user and aircraft fully, including number of passengers and cargo on board.

(2) State the purpose of the proposed use and the reason why the use of the NASA airfield is proposed rather than a commercial airport.

(3) Indicate the number and approximate date(s) and time(s) of such proposed use.

(4) State that the prospective user is familiar with the provisions of this Subpart 1204.14 and is prepared to fully comply with its terms and the use permit which may be issued.

(c) Upon receipt of the written request for permission to use the airport, the NASA official designated by each facility will request additional information, if necessary, and forward the required Hold Harmless Agreement for execution by the requestor or forward, where appropriate, a denial of the request.

(d) The signed original of the Hold Harmless Agreement shall be returned to the designated NASA official, and a copy retained in the aircraft at all times. Such copy shall be exhibited upon proper demand by any NASA official.

(e) At the same time that the prospective user returns the executed original of the Hold Harmless Agreement, the user shall forward to the designated NASA official the required Certificate of Insurance and waiver of rights to subrogation. Such certificate shall evidence that during any period for which a permit to use is being requested, the prospective user has in force a policy of insurance covering liability to others in amounts not less than those listed in the Hold Harmless Agreement.

(f) When the documents (in form and substance) required by paragraphs (b) through (e) of this section have been received, they will be forwarded with a proposed use permit to the approving authority for action.

(g) The designated NASA official will forward the executed use permit or notification of denial thereof to the prospective user after the approving authority has acted.

§ 1204.1405 Approving authority.

The authority to establish limitations and procedures for use of a NASA airfield as well as the authority to approve or disapprove the use of the

NASA airfield facilities subject to the terms and conditions of this Subpart 1204.14 and any supplemental rules or procedures established for the facility is vested in:

(a) *Shuttle Landing Facility*. Director of Center Support Operations, Kennedy Space Center, NASA.

(b) *Wallops Airport*. Director of Suborbital Projects and Operations, Goddard Space Flight Center, Wallops Flight Facility, NASA.

§ 1204.1406 Procedures in the event of a declared in-flight emergency.

(a) Any aircraft involved in a declared in-flight emergency that endangers the safety of its passengers and aircraft may land at a NASA airfield. In such situations, the requirements of this Subpart 1204.14 for advance authorizations, do not apply.

(b) NASA personnel may use any method or means to clear the aircraft or wreckage from the runway after a landing following an in-flight emergency. Care will be taken to preclude unnecessary damage in so doing. However, the runway will be cleared as soon as possible for appropriate use.

(c) The emergency user will be billed for all costs to the Government that result from the emergency landing. No landing fee will be charged, but the charges will include the labor, materials, parts, use of equipment, and tools required for any service rendered under these circumstances.

(d) In addition to any report required by the Federal Aviation Administration, a complete report covering the landing and the emergency will be filed with the airfield manager by the pilot or, if the pilot is not available, any other crew member or passenger.

(e) Before an aircraft which has made an emergency landing is permitted to take off (if the aircraft can and is to be flown out) the owner or operator thereof shall make arrangements acceptable to the approving authority to pay any charges assessed for services rendered and execute a Hold Harmless Agreement. The owner or operator may also be required to furnish a certificate of insurance, as provided in § 1204.1404, covering such take off.

§ 1204.1407 Procedure in the event of an unauthorized use.

Any aircraft not operated for the benefit of the Federal Government which lands at a NASA airfield facility without obtaining prior permission from the approving authority, except in a bona fide emergency, is in violation of this Subpart 1204.14. Such aircraft will experience delays while authorization for departure is obtained pursuant to

this Subpart 1204.14 and may, contrary to the other provisions of this Subpart 1204.14, be required, in the discretion of the approving authority, to pay a user fee of not less than \$100. Before the aircraft is permitted to depart, the approving authority will require full compliance with this Subpart 1204.14, including the filing of a complete report explaining the reasons for the unauthorized landing. When it appears that the violation of this Subpart 1204.14 was deliberate or is a repeated violation, the matter will be referred to the Aircraft Management Office, NASA Headquarters, which will then grant any departure authorization.

James M. Beggs,

Administrator.

October 18, 1985.

[FR Doc. 85-25345 Filed 10-23-85; 8:45 am]

BILLING CODE 7510-01-M

14 CFR Part 1261

Processing of Monetary Claims (General)

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: The National Aeronautics and Space Administration is amending 14 CFR Part 1261 by revising Subpart 1261.1, "Employees' Personal Property Claims," to conform to enacted revisions of the Military Personnel and Civilian Employees' Claims Act of 1964, as amended.

EFFECTIVE DATE: November 24, 1985.

ADDRESS: Office of General Counsel, Code GS, National Aeronautics and Space Administration, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Sara Najjar, 202-453-2432.

SUPPLEMENTARY INFORMATION: The Military Personnel and Civilian Employees' Claims Act of 1964, as amended, 31 U.S.C. 3721 (formerly 31 U.S.C. 240-243) was amended on July 28, 1982, by Pub. L. 97-226 to increase from \$15,000.00 to \$25,000.00 the maximum amount the agency may pay in settlement of personal property claims incident to service. By Pub. L. 97-452, January 12, 1983, the statutory citation was recodified as 31 U.S.C. 3721, without substantive change. This final rule by NASA reflects the current authority citation and the increased amount.

Special Analysis:

Because this rule is only technical in nature, correcting a statutory citation and a mandated dollar amount, it does not constitute a major rule for purposes of Executive Order 12291, and is not subject to the Regulatory Flexibility Act at 5 U.S.C. 601 et seq.

List of Subjects in 14 CFR Part 1261

Administrative practice and procedure, Claims, Government employees, Personal property, Military Personnel and Civilian Employees' Claims Act of 1964, as amended.

Accordingly, Title 14 of the Code of Federal Regulations is amended as set forth below:

PART 1261—PROCESSING OF MONETARY CLAIMS (GENERAL)

1. The authority citation for 14 CFR Part 1261 Subpart 1261.1 is revised to read as follows:

Authority: 31 U.S.C. 3721.

2. Section 1261.102 is revised to read as follows:

§ 1261.102 Maximum amount.

On or after October 1, 1982, the maximum amount that may be paid under the Military Personnel and Civilian Employees' Claims Act of 1964, as amended (31 U.S.C. 3721) is \$25,000.00.

James M. Beggs,
Administrator.

October 18, 1985.

[FR Doc. 85-25348 Filed 10-23-85; 8:45 am]

BILLING CODE 7510-01-M

this viticultural area as an appellation of origin will also help winemakers distinguish their products from wines made in other areas.

EFFECTIVE DATE: November 25, 1985.

FOR FURTHER INFORMATION CONTACT:

John A. Linthicum, FAA, Wine and Beer Branch, (202) 566-7626.

SUPPLEMENTARY INFORMATION:**Background**

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, corrected at 54824, November 22, 1978,) revising regulations in 27 CFR Part 4. These regulations allow the establishment of definite viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements.

On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added a new Part 9 to 27 CFR, providing for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25a(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features. Section 4.25(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area.

Taylor California Cellars, a winery in Gonzales, California, petitioned ATF to establish the Central Coast viticultural area. In response to this petition, ATF published a notice of proposed rulemaking (Notice No. 532) in the Federal Register on July 11, 1984 proposing the establishment of the Central Coast viticultural area.

General Description

The proposed Central Coast viticultural area consisted of approximately 1 million acres with approximately 51,209 acres of grapevines. There are 97 grape growers and 55 wineries in the proposed area.

The following approved viticultural areas are wholly within the Central Coast viticultural area: Sections 9.24 Chalona, 9.54 Santa Ynez Valley, 9.27 Lime Kiln Valley, 9.58 Carmel Valley, 9.28 Santa Maria Valley, 9.46 Livermore Valley, 9.59 Arroyo Seco, 9.35 Edna Valley, 9.80 York Mountain, 9.38 Cienega Valley, 9.84 Paso Robles, 9.39 Paicines, 9.88 Pacheco Pass, and 9.93 Monterey.

Name

California alcoholic beverage laws regulate the use of the words "California

Central Coast Counties" on labels of dry wine. Under section 25236 of the California Alcoholic Beverage Laws, the term "California central coast counties dry wine" may appear on labels of:

* * * dry wine produced entirely from grapes grown within the Counties of Sonoma, Napa, Mendocino, Lake, Santa Clara, Santa Cruz, Alameda, San Benito, Solano, San Luis Obispo, Contra Costa, Monterey, and Marin.

However, effective January 1, 1983, "Central Coast Counties" is not an authorized appellation of origin under 27 CFR 4.25a(a)(1) (v) or (c). The names of two or no more than three counties in the same state would be the only authorized multi-county appellation of origin in conjunction with the word "counties."

The name "Central Coast" has been identified as a grape growing/wine producing region in several books, magazines, and other publications which cater to the wine industry and wine consumers.

Geographical Features Which Affect Viticultural Features

The Central Coast viticultural area is bounded on the west by the Pacific Ocean and on the east by the California Coastal Ranges. The Coastal Ranges form a barrier to the marine influence on climate, causing precipitation, heat summation, maximum high temperatures, minimum low temperatures, length of the frost-free season, wind, marine fog incursion, and relative humidity to be significantly different on opposite sides of these mountains. The area inland of the Coastal Ranges is typically arid or semi-arid. This difference in climate causes harvested grapes to be significantly different from grapes grown farther inland.

ATF believes that a viticultural area named with the word "coast" should be an area which is under the marine influence. This idea is based on a principle in *General Viticulture* by A.J. Winkler, et al. (page 68), that grapes grown in a coastal region are different from grapes grown in an interior valley even if both areas have the same heat summation. Therefore, the eastern boundary of the Central Coast viticultural area is drawn at the approximate inland limit of the marine influence on climate.

Within the Central Coast area, two other viticultural areas, Chalona and Paso Robles, were established because they are also under marine influence, but to a lesser degree. The Chalona area is at a high altitude on a precipice above the Salinas River Valley. This area possesses a slightly different

DEPARTMENT OF THE TREASURY**Bureau of Alcohol, Tobacco and Firearms****27 CFR Part 9**

[T.D. ATF-216; Re: Notice No. 532]

Establishment of Central Coast Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule establishes a viticultural area in Monterey, Santa Cruz, Santa Clara, Alameda, San Benito, San Luis Obispo, and Santa Barbara Counties, California, known as "Central Coast." The establishment of viticultural areas and the subsequent use of viticultural areas names as appellations of origin in wine labeling and advertising will help consumers better identify wines they purchase. The use of

microclimate than the surrounding terrain several hundred feet below it. However, it is still under the marine climate influence, especially in comparison to areas which are farther inland.

The Paso Robles area is shielded from marine influence from the south and west. However, the marine influence traveling south from Monterey Bay, through the Salinas River Valley, reaches the Paso Robles area to a limited degree. This fact is readily apparent from the orientation of the airport runway at Shandon, California, parallel to winds in the Salinas River Valley. Although, the marine influence does not reach Paso Robles through the Shortest route, this area is still under marine influence and possesses microclimates characteristic of coastal valleys, especially in comparison to areas which are farther inland.

Public Comments

In response to Notice No. 532, ATF received comments from the Petitioner (2 comments), Paul Masson Vineyards, Sarah's Vineyard, Mirassou Vineyards, and Wente Brothers.

Paul Masson Vineyards commented that the proposed area defines a homogeneous climatic zone containing microclimate variations within a large region of marine climate influence.

Three commenters requested that the proposed northern boundary be extended farther north. John Otteman, proprietor of Sarah's Vineyard requested a modification of the proposed northern boundary to include his vineyard. The comment, and subsequent correspondence, included evidence supporting the inclusion of a small portion of Santa Clara County, since it is under the marine climate influence. The petitioner submitted a comment supporting the inclusion of this area.

Mirassou Vineyards requested a modification of the proposed northern boundary to include their vineyards located near the city of San Jose. This comment included evidence supporting the inclusion of most of Santa Clara County, since it is under the marine climate influence. This comment also contained evidence that the name "Central Coast" applies to areas which are much farther north than the proposed boundary.

Wente Brothers requested a modification of the proposed northern boundary to include their vineyards located in the Livermore Valley viticultural area. This viticultural area was approved on the basis of marine climate influence, among other geographical features. ATF stated in the

notice of proposed rulemaking "In general, the name 'Central Coast' applies to the coastline between the cities of Santa Cruz and Santa Barbara." However, Wente Brothers commented that Livermore Valley has been placed in "Central Coast" by wine writers, retailers, and consumers. Patrick W. Fegan, in his book *Vineyards and Wineries of America*, and The Wine Spectator, in their book *Wine Maps*, include Alameda County in the "Central Coast" area. Hugh Johnson, in his book *Modern Encyclopedia of Wine*, describes the "Central Coast" area as an indeterminate area between San Francisco and Santa Barbara.

On the basis of this evidence relating to the name, and on the basis of evidence that the marine climate influence is present throughout the areas requested for inclusion by the commenters, ATF is enlarging the approved area to include the Livermore Valley viticultural area and the portion of Santa Clara which is under the marine climate influence.

Boundary Modification

Based on the above discussion of comments received, the boundary of the Central Coast viticultural area proposed in Notice No. 532 is modified by incorporating the approved boundary of the Livermore Valley viticultural area. The boundary also uses part of the approved Santa Cruz Mountains viticultural area boundary as the western boundary of the northern extension. The eastern boundary of the northern extension is a series of straight lines connecting map features on the eastern ridge of Santa Clara Valley. The northern extension of the original proposed boundary is located approximately at the inland limit of the marine influence on climate.

Correction of Santa Maria Valley

In studying the viticultural areas located within the Central Coast area, ATF observed that the regulation covering the Santa Maria Valley viticultural area, 27 CFR 9.28, contains an error relating to the identification of the maps. This error is corrected in this final rule.

Miscellaneous

ATF does not wish to give the impression by establishing the Central Coast viticultural area that it is endorsing the quality of the wine from this area. ATF is establishing this area as being distinct and not better than other areas. By establishing this area, Central Coast wine producers will be able to claim a distinction on labels and in advertisements as to the origin of the

grapes. Any commercial advantage gained can only come from consumer acceptance of Central Coast wines.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because it will not have a significant economic impact on a substantial number of small entities. The final rule will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The final rule is not expected to have significant secondary or incidental effects on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this final rule, will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

In compliance with Executive Order 12291, ATF has determined that this final rule is not a "major rule" since it will not result in:

- (a) An annual effect on the economy of \$100 million or more;
- (b) A major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or
- (c) Significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this final rule because no requirement to collect information is imposed.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural areas, Wine.

Drafting Information

The principal author of this document is John A. Linthicum, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

Authority and Issuance

PART 9—[AMENDED]

27 CFR Part 9—American Viticultural Areas is amended as follows:

1. The authority citation for Part 9 is revised to read as follows:

Authority: 5 U.S.C. 301; 22 U.S.C. 2778; 26 U.S.C. 7602; 27 U.S.C. 205.

2. The table of sections in 27 CFR Part 9 Subpart C is amended by adding the heading of § 9.75 to read as follows:

Subpart C—Approved American Viticultural Areas

Sec.

9.75 Central Coast.

§ 9.28 [Corrected]

3. Paragraphs (b)(1) and (b)(2) of § 9.28 are corrected by replacing "scale 1:125,000" with "scale 1:250,000".

4. Section 9.75 is added to Subpart C to read as follows:

§ 9.75 Central Coast.

(a) *Name.* The name of the viticultural area described in this section is "Central Coast."

(b) *Approved maps.* The approved maps for determining the boundary of the Central Coast viticultural area are the following 18 U.S.G.S. topographic maps:

(1) Monterey, California (formerly, the Santa Cruz map), scale 1:250,000, NJ 10-12, dated 1974;

(2) Watsonville East, Calif. Quadrangle, Scale 1:24,000, dated 1955, photorevised 1968;

(3) Mt. Madonna, Calif. Quadrangle, Scale 1:24,000, dated 1955, photorevised 1980;

(4) Loma Prieta, Calif. Quadrangle, Scale 1:24,000, dated 1955, photorevised 1968;

(5) Morgan Hill, Calif. Quadrangle, Scale 1:24,000, dated 1955, photorevised 1980;

(6) Santa Teresa Hills, Calif. Quadrangle, Scale 1:24,000, dated 1953, photorevised 1968;

(7) Los Gatos, Calif. Quadrangle, Scale 1:24,000, dated 1953, photorevised 1980;

(8) Castle Rock Ridge, Calif. Quadrangle, Scale 1:24,000, dated 1955, photorevised 1968, photorevised 1973;

(9) San Jose, California, scale 1:250,000, NJ 10-9, dated 1962, revised 1969;

(10) Dublin, Calif. Quadrangle, scale 1:24,000, dated 1961, photorevised 1980;

(11) Livermore, Calif. Quadrangle, scale 1:24,000, dated 1961, photorevised 1968 and 1973;

(12) Tassajara, Calif. Quadrangle, scale 1:24,000, dated 1953, photorevised 1974;

(13) Byron Hot Springs, Calif. Quadrangle, scale 1:24,000, dated 1953, photorevised 1968;

(14) Altamont, Calif. Quadrangle, scale 1:24,000, dated 1953, photorevised 1968;

(15) Mendenhall Springs, Calif. Quadrangle, scale 1:24,000, dated 1956, photorevised 1971;

(16) San Luis Obispo, California, scale 1:250,000, NJ 10-3, dated 1956, revised 1969 and 1979;

(17) Santa Maria, California, scale 1:250,000, NJ 10-6, 9, dated 1956, revised 1969; and

(18) Los Angeles, California, scale 1:250,000, NJ 11-4, dated 1974.

(c) *Boundary.* The Central Coast viticultural area is located in the following California counties: Monterey, Santa Cruz, Santa Clara, Alameda, San Benito, San Luis Obispo, and Santa Barbara. All townships and ranges in this boundary description are derived from Mt. Diablo Base and Meridian. This boundary description includes (in parentheses) the name of the map sheet on which the described point is found.

(1) The beginning point is the point at which the Pajaro River flows into Monterey Bay. (Monterey map)

(2) The boundary follows the Pajaro River inland to its confluence with Salspuedes Creek. (Watsonville East Quadrangle)

(3) The boundary follows Salspuedes Creek northerly to its confluence with Corralitos Creek. (Watsonville East Quadrangle)

(4) The boundary follows Corralitos Creek westerly to its intersection with State Route 152. (Watsonville East Quadrangle)

(5) The boundary follows State Route 152 northerly across the Santa Cruz-Santa Clara County line to its intersection with the 800-foot contour line. (Watsonville East Quadrangle)

(6) The boundary follows the 800-foot contour line northerly to its intersection with the section line on the eastern boundary of Section 25 in Township 10 South, Range 2 East. (Mt. Madonna Quadrangle)

(7) The boundary follows this section line north to its intersection with the 800-foot contour line. (Mt. Madonna Quadrangle)

(8) The boundary follows the 800-foot contour line northerly (across the Loma Prieta, Mt. Madonna, Morgan Hill, Santa Teresa Hills, Los Gatos, and Castle Rock Ridge Quadrangles) to its intersection with the 122°00' West longitude meridian on the western boundary of Section 17 in Township 8

South, Range 1 West. (Los Gatos Quadrangle)

(9) The boundary follows the 122°00' West longitude meridian north (across the San Jose map) to its intersection with Interstate Route 580. (Dublin Quadrangle)

(10) From the intersection of 122°00' West longitude meridian with Interstate Route 580, the boundary proceeds in a straight line northeasterly to the intersection of the Contra Costa-Alameda County line with Interstate Route 680. (Dublin Quadrangle)

(11) The boundary follows the Contra Costa-Alameda County line northeasterly (across the Livermore Quadrangle) to its intersection with east-west section line on the northern boundary of Section 16 in Township 2 South, Range 2 east. (Tassajara Quadrangle)

(12) The boundary follows this east-west section line east along the northern boundaries of Sections 16, 15, 14, and 13 in Township 2 South, Range 2 east, and east along the northern boundary of Section 18 in Township 2 South, Range 3 east, to the northeast corner of that Section 18. (Byron Hot Springs Quadrangle)

(13) The boundary follows the north-south section line, which coincides, in part, with Dyer Road, south (across the Altamont Quadrangle) along the eastern boundaries of Sections 18, 19, 30, and 31 in Township 2 South, Range 3 east, south along the western boundaries of Sections 5, 8, 17, 20, 29, and 32 in Township 3 South, Range 3 east, and south along the western boundaries of Sections 5, 8, 17, and 20 in Township 4 South, Range 3 east, to the southwest corner of that Section 20. (Mendenhall Springs Quadrangle)

(14) The boundary follows the east-west section line west along the southern boundary of Section 19 in Township 4 South, Range 3 east, and west along the southern boundary of Section 24 in Township 4 South, Range 2 east, to the southwest corner of that Section 24. (Mendenhall Springs Quadrangle)

(15) The boundary follows the north-south section line north along the western boundary of Section 24 in Township 4 South, Range 2 east, to the northwest corner of that Section 24. (Mendenhall Springs Quadrangle)

(16) The boundary follows the east-west section line west along the southern boundary of Section 14 in Township 4 South, Range 2 east, to the southwest corner of that Section 14. (Mendenhall Springs Quadrangle)

(17) The boundary follows the north-south section line north along the

western boundary of Section 14 in Township 4 South, Range 2 east, to the Hetch Hetchy Aqueduct. (Mendenhall Springs Quadrangle)

(18) The boundary follows the Hetch Hetchy Aqueduct southwesterly to the range line dividing Range 1 East from Range 2 East. (San Jose map)

(19) The boundary follows this range line south to its intersection with State Route 130. (San Jose map)

(20) The boundary follows State Route 130 southeasterly to its intersection with the township line dividing Township 6 South from Township 7 South. (San Jose map)

(21) From this point, the boundary proceeds in a straight line southeasterly to the intersection of the township line dividing Township 7 South from Township 8 South with the range line dividing Range 2 East from Range 3 East. (San Jose map)

(22) From this point, the boundary proceeds in a straight line southeasterly to the intersection of the township line dividing Township 8 South from Township 9 South with the range line dividing Range 3 East from Range 4 East. (San Jose map)

(23) From this point, the boundary proceeds in a straight line southeasterly to the intersection of Coyote Creek with the township line dividing Township 9 South from Township 10 South. (San Jose map)

(24) From this point, the boundary proceeds in a straight line southeasterly to the intersection of the 37° 00' North latitude parallel with State Route 152. (San Jose map)

(25) The boundary follows the 37° 00' North latitude parallel east to the range line dividing Range 5 East from Range 6 East. (Monterey map)

(26) The boundary follows this range line south to the San Benito-Santa Clara County line. (Monterey map)

(27) The boundary follows the San Benito-Santa Clara County line easterly to the San Benito-Merced County line. (Monterey map)

(28) The boundary follows the San Benito-Merced County line southeasterly to the conjunction of the county lines of San Benito, Merced, and Fresno Counties. (Monterey map)

(29) From this point, the boundary proceeds in a southwesterly extension of the Merced-Fresno County line to Salt Creek. (Monterey map)

(30) From this point, the boundary proceeds in a straight line southeasterly to the conjunction of the county lines of Monterey, San Benito, and Fresno Counties. (Monterey map)

(31) The boundary follows the Monterey-Fresno County line southeasterly to the Monterey-Kings

County line. (Monterey and San Luis Obispo maps)

(32) The boundary follows the Monterey-Kings County line southeasterly to the San Luis Obispo-Kings County line. (San Luis Obispo map)

(33) The boundary follows the San Luis Obispo-Kings County line east to the San Luis Obispo-Kern County line. (San Luis Obispo map)

(34) The boundary follows the San Luis Obispo-Kern County line south, then east, then south to the point at which the county line diverges easterly from the range line dividing Range 17 East from Range 18 East. (San Luis Obispo map)

(35) The boundary follows this range line south to the township line dividing Township 28 South from Township 29 South. (San Luis Obispo map)

(36) The boundary follows the township line west to the range line dividing Range 13 East from Range 14 East. (San Luis Obispo map)

(37) The boundary follows this range line south to the boundary of the Los Padres National Forest. (San Luis Obispo map)

(38) The boundary follows the boundary of the Los Padres National Forest southeasterly to the creek of Toro Canyon. (San Luis Obispo, Santa Maria, and Los Angeles maps)

(39) The boundary follows the creek of Toro Canyon southerly to the Pacific Ocean. (Los Angeles map)

(40) The boundary follows the shoreline of the Pacific Ocean and Monterey Bay northerly to the beginning point. (Los Angeles, Santa Maria, San Luis Obispo, and Monterey maps)

Signed: October 2, 1985.

Stephen E. Higgins,
Director.

Approved: October 10, 1985.

Edward T. Stevenson,
Deputy Assistant Secretary (Operations).
[FR Doc. 85-25315 Filed 10-23-85; 8:45 am]
BILLING CODE 4810-31-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

Approved State Plans for Enforcement of State Standards; Approval of Supplements to the Alaska State Plan

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Approval of Supplements to the Alaska State Plan.

SUMMARY: This document gives notice of approval of various State plan supplements including a revised Alaska field compliance manual, an industrial hygiene technical manual, an inspection scheduling system, an amendment to the Alaska occupational safety and health legislation, amendments to administrative regulations, as well as several State-initiated changes associated with administrative reorganization, compliance procedure and agreements with other State agencies.

EFFECTIVE DATE: October 24, 1985.

FOR FURTHER INFORMATION CONTACT: James Foster, Director, Office of Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210, (202) 523-8148.

SUPPLEMENTARY INFORMATION:

Background

The Alaska Occupational Safety and Health Plan was approved under section 18(c) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667(c)) (hereinafter referred to as the Act) and Part 1902 of this chapter on August 10, 1973 (38 FR 21626). A determination of final approval was made under section 18(e) of the Act on September 28, 1984 (49 FR 38252). Part 1953 of this chapter provides procedures for the review and approval of State change supplements by the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter referred to as the Assistant Secretary).

Description of Supplements

A. Alaska Safety Field Operations Manual

The State submitted a revised version of its previously approved manual which details compliance procedures for its occupational safety program on May 11, 1984, with revisions on September 6, 1984, March 28, 1985, April 4, 1985, March 28, 1985, and June 14, 1985. The manual is modeled generally after the Federal manual, and revisions thereto through February 11, 1985.

B. Alaska Industrial Hygiene Technical Manual

The State submitted its manual detailing industrial hygiene technical procedures on February 21, 1985. The State manual is modeled after the Federal manual and addresses revisions to the Federal manual through October 29, 1984.

C. Inspection Scheduling System

The State submitted a revised safety and health inspection scheduling system on January 9, 1985, with an additional revision submitted March 28, 1985, which was generally patterned after the Federal scheduling system in effect October 29, 1984. Inspections are programmed utilizing lists of employers whose operations are within industries with high injury rates, or which have a high potential for health problems.

D. Notice of Violation Procedures

The State submitted an amendment to its legislation (Alaska Statutes—Prevention of Accident and Health Hazards, §§ 18.60.91 and .93) and related field procedures on January 25, 1984, which provide for issuance of a notice of violation at the worksite for other than serious violations in lieu of a citation when an employer agrees to correct and not to contest the violations. The same procedures to compel compliance by the employer apply as when citations are issued.

E. Guidelines for Superfund and Other Hazardous Waste Site Activities

The State submitted a supplement on February 4, 1985, providing technical procedures for providing assistance and enforcing standards at Superfund and other hazardous waste sites. The State's submission provides procedures virtually identical to Federal guidelines issued December 30, 1983.

F. Policy on MSHA/OSHA Jurisdiction

The State submitted procedures October 24, 1980, to ensure consistency with OSHA policy issued March 14, 1980, providing guidance on determining enforcement responsibility in situations where the Mine Safety and Health Administration's and OSHA's jurisdiction overlapped. The policy resulted from an MSHA/OSHA jurisdictional agreement.

G. Regulations Concerning Personal Sampling, Ex Parte Warrants

The State submitted amendments to its regulations (8 AAC 61.020) on February 16, 1983, and September 30, 1983, closely reflecting Federal changes to regulations at 29 CFR 1903.4 and 1903.7 effective November 3, 1980, and January 10, 1983, respectively, which provided authority for use of personal sampling devices during inspections and authority to obtain ex parte warrants in advance of attempting inspection.

H. Petitions for Modification of Abatement Period

The State submitted an amendment to its regulations (8 AAC 61.435) on

January 29, 1985, which specifically places the burden of proof on an employer when petitions to modify correction dates are heard by the State Review Board. Federal rules at 29 CFR 2200.73 include a closely similar provision.

I. Withdrawal of Notice of Contest

The State submitted an amendment to its regulations (8 AAC 61.170) on February 18, 1981, providing for withdrawal of a notice of contest if all parties are notified. Federal rules at 29 CFR 2200.100A include a similar provision.

J. Recordkeeping

On February 18, 1981, and September 30, 1983, Alaska submitted amendments to its regulations (8 AAC 61.225, .230) reflecting Federal regulations at 29 CFR 1904.5 and 1904.12, specifically providing authority to cite and set penalties when an employer subject to mandatory requirements to maintain an annual summary of injuries and illnesses does not comply, and providing exemption from recordkeeping requirements for employers of fewer than 10 employees and certain low-hazard industries, respectively.

K. Voluntary Compliance

The State submitted amendments to its administrative regulations (8 AAC 61.420 and 425) on January 29, 1985, which provide for enforcement action to require correction of serious hazards uncovered during a consultative visit when an employer fails to take corrective action, and exemption from scheduled enforcement inspection under certain conditions when an employer has had a consultative visit and abated any hazards discovered. Federal rules at 29 CFR 1908.6 and 1908.7 include similar provisions.

L. Revisions to State Agency Title, Address

On September 30, 1983, Alaska submitted amendments to its regulations (8 AAC 61.150, .200, .460 and 62.070) reflecting a change in title of the division within the Alaska Department of Labor which is responsible for occupational safety and health enforcement under the Alaska plan from the Division of Occupational Safety and Health to the Division of Labor Standards and Safety and providing a new mailing address for filing a notice of contest.

M. Organization Changes

Alaska submitted supplements to reflect changes in organization and staffing on July 21, 1981, May 21, 1982, August 12, 1983, December 16, 1983,

March 15, 1984, and July 19, 1984. These changes involved combining the enforcement division with the wage and hour division under one director, adding a deputy director position, renaming the enforcement division, adding an industrial hygienist, transferring a safety inspector, changing primary duties of one safety inspector position from inspections to discrimination investigation, and adding a clerical position.

N. Interagency Agreements

The State submitted a supplement on October 4, 1982, to reflect an agreement between the Alaska Department of Labor and the Department of Public Safety to coordinate activity in areas of mutual interest concerning fire prevention, especially to exchange information on inspections, standards, and variances. Additionally, the State submitted a supplement on October 4, 1982, with a revision on November 9, 1983, to reflect an agreement between the Alaska Department of Labor and Health and Social Services to coordinate activity with respect to occupational exposure to radiation, in establishments within the scope of the State's jurisdiction, including reporting occupational radiation hazards identified by Health and Social Services to the Department of Labor for compliance action, and contracting Health and Social Services to provide radiation inspection services.

O. Various Administrative and Enforcement Policies

Alaska submitted procedures on January 31, 1979, concerning verification of serious violations correction, training evaluation, first aid training, and on February 25, 1981, procedures for evaluating inspector performance.

Location of Plan Supplements for Inspection and Copying

A copy of the plan and its supplements may be inspected and copied during normal business hours at the following locations:

Office of the Regional Administrator, Occupational Safety and Health Administration, Room 6003, Federal Office Building, 909 First Avenue, Seattle, Washington 98174; State of Alaska, Department of Labor, Office of the Commissioner, 1111 W. 8th Street, Room 306, Juneau, Alaska 99801, and the OSHA Office of State Programs, Room N3476, 200 Constitution Avenue NW., Washington, D.C. 20210.

Public Participation

Under § 1953.2(c) of this chapter the Assistant Secretary may prescribe alternative procedures to expedite the review process or for any other good cause which may be consistent with applicable law. The Assistant Secretary finds that the State amendments to its legislation, administrative rules, compliance procedures, and rules for review of contested cases were adopted in accordance with procedural requirements of State law. The plan supplements which provide State procedures in response to Federal program changes are substantially in agreement with their requirements and other State-initiated program change supplements do not significantly alter the State program. Good cause is therefore found for approval of these supplements, and further public participation would be unnecessary.

List of Subjects in 29 CFR Part 1952

Intergovernmental relations, Law enforcement, Occupational safety and health.

Decision

After careful consideration and extensive review by the OSHA Regional and National Offices, the Alaska plan supplements described above are found to be effective as comparable Federal procedures and are hereby approved under Part 1953 of this chapter. This decision incorporates the requirements of the Act and implementing regulations applicable to State plans generally.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Washington, D.C. this 21st day of October, 1985.

Patrick R. Tyson,

Acting Assistant Secretary of Labor.

PART 1952—[AMENDED]

Accordingly, Subpart R of 29 CFR Part 1952 is hereby amended as follows:

1. The authority citation for Part 1952 is revised to read as follows:

Authority: Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667).

2. New 1952.246 is added to read as follows:

§ 1952.246 Changes to approved plans.

(a) In accordance with Part 1953 of this chapter, the following Alaska plan changes were approved by the Assistant Secretary:

(1) The State submitted a revised field operations manual patterned after and responsive to modifications to the

Federal field operations manual in effect February 11, 1985 which superseded its earlier approved manual. The Assistant Secretary approved the manual on October 24, 1985.

(2) The State submitted an industrial hygiene technical manual patterned after and responsive to modifications to the Federal manual in effect October 29, 1984. The Assistant Secretary approved the manual on October 24, 1985.

(3) The State submitted an inspection scheduling system patterned after and responsive to the Federal system in effect October 29, 1984. The Assistant Secretary approved the supplement on October 24, 1985.

(4) The State submitted an amendment to its legislation and field procedures which provided for issuance of an onsite notice of violations which serves to require correction of other than serious violations in lieu of a citation. The Assistant Secretary approved these changes on October 24, 1985.

(5) The State submitted several changes on its administrative and review rules concerning personal sampling, ex parte warrants, petition to modify abatement dates, withdrawal of contest, recordkeeping penalties and exemptions, exemption from scheduled inspections after consultation, renaming the division of the State agency directly enforcing standards, and the address for filing contests. The Assistant Secretary approved these changes on October 24, 1985.

[FR Doc. 85-25464 Filed 10-23-85; 8:45 am]

BILLING CODE 4510-26-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD8-85-14]

Drawbridge Operation Regulation; Tickfaw River, LA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Louisiana Department of Transportation and Development (LDOTD), the Coast Guard is changing the regulation governing the operation of the swing span bridge over the Tickfaw River, mile 7.2, on LA22 at Killian, Livingston Parish, Louisiana. The change requires that at least four hours advance notice be given for an opening of the draw between 11 p.m. and 7 a.m. Outside these hours, the bridge will open on

signal. Presently, the draw is required to open on signal at all times. This change is being made because of infrequent requests to open the draw during the advance notice period. This action will relieve the bridge owner of the burden of having a person constantly available at the bridge between 11 p.m. and 7 a.m., yet still provide for the reasonable needs of navigation.

EFFECTIVE DATE: This regulation becomes effective on November 25, 1985.

FOR FURTHER INFORMATION CONTACT: Perry Haynes, Chief, Bridge Administration Branch, telephone (504) 589-2965.

SUPPLEMENTARY INFORMATION: On 25 July 1985, the Coast Guard published a proposed rule (50 FR 30284) concerning this amendment. The Commander, Eighth Coast Guard District, also published the proposal as a public notice dated 5 August 1985. In each notice interested persons were given until 9 September 1985 to submit comments.

Drafting Information

The drafters of this regulation are Perry Haynes, project officer, and Lieutenant Commander James Vallone, project attorney.

Discussion of Comments

Two letters were received in response to the notice, offering no objections to the proposed change.

Economic Assessment and Certification

This regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that the average number of vessels passing the bridge during the advance notice period, 11 p.m. to 7 a.m., is one vessel every seven days. These few vessels can reasonably give four hours advance notice for a bridge opening by placing a collect call to the bridge owner at any time. The advance notice for an opening of the draw is to be given to the LDOTD District Office in Hammond, Louisiana, telephone (504) 345-7390. The LDOTD recognizes that there may be an unusual occasion to open the bridge on less than four hours notice for an emergency or to operate the bridge on demand for an

isolated but temporary surge in waterway traffic, and has committed to doing so if such an event should occur. Mariners requiring the bridge openings are repeat users of the waterway and scheduling their arrival at the bridge at the appointed time during the advance notice period should involve little or no additional expense to them. Since the economic impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117
Bridges.

**PART 117—DRAWBRIDGE
OPERATION REGULATIONS**

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; and 49 CFR (c)(5) and 33 CFR 1.05-1(g).

2. Section 117.506 is added to read as follows:

§ 117.506 Tickfaw River.

The draw of the S22 bridge, mile 7.2 at Killian, shall open on signal, except that, from 11 p.m. to 7 a.m. the draw shall open on signal if at least four hours notice is given. During the advance notice period, the draw shall open on less than four hours notice for an emergency and shall open on signal should a temporary surge in waterway traffic occur.

Dated: October 4, 1985.

Clyde T. Lusk, Jr.,

Rear Admiral, U.S. Coast Guard, Commander,
Eighth Coast Guard District.

[FR Doc. 85-25430 Filed 10-23-85; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 117

(CGD3 84-35)

**Drawbridge Operation Regulations;
Cheesequake Creek, NJ**

AGENCY: Coast Guard, DOT.

ACTION: Cancellation of rulemaking.

SUMMARY: This document withdraws a proposed rule regarding a change to the regulations (33 CFR 117.709) for New Jersey Transit Rail Operations (NJTRO's) Morgan railroad drawbridge at Morgan, New Jersey. It was proposed that the bridge remain closed to marine traffic during peak morning (6:30 a.m. to 8 a.m.) and evening (5:30 p.m. to 6:40 p.m.) rush hours. The proposal is being

withdrawn because major changes would be needed in the proposed rule to meet the needs of marine traffic. These changes became apparent as a result of substantive comments received from concerned parties.

FOR FURTHER INFORMATION CONTACT:
William C. Heming, Bridge
Administrator, Third Coast Guard
District, (212) 668-7994.

SUPPLEMENTARY INFORMATION: In the April 29, 1985 issue of the *Federal Register* (50 FR 16720), the Coast Guard published a proposed rule regarding a change to the regulations for NJTRO's Morgan Drawbridge at Morgan, New Jersey. Interested persons were given until June 13, 1985 to comment. This proposal was also disseminated by Commander, Third Coast Guard District Public Notice 3-595 dated May 8, 1985. Additionally, a public hearing was held on July 24, 1985 at the William C. McGinnis School, 271 State Street, Perth Amboy, New Jersey. Notice of this public hearing and an extension of the comment period to August 9, 1985 was published in the June 28, 1985 issue of the *Federal Register* (50 FR 26808) and announced by Commander, Third Coast Guard District, Public Notice 3-600 dated June 19, 1985.

Many of the comments received in response to the notices and at the public hearing addressed substantive issues regarding the proposed rule. After review of these comments, several areas of the proposed rule were identified as requiring significant alterations before NJTRO's request for a change to the existing drawbridge regulations could be pursued further. Specifically, the regulations as proposed did not adequately provide for the needs of navigation and the data submitted by the railroad did not indicate that the present regulations are causing unreasonable delays to rail traffic when the bridge is operating properly. In light of the foregoing, the Coast Guard has decided to withdraw the proposed rule.

List of Subjects in 33 CFR Part 117

Bridges.

Accordingly, the proposed rule published in the *Federal Register* (50 FR 16720) on April 29, 1985 is hereby withdrawn.

Dated: October 8, 1985.

P.A. Yost,

Vice Admiral, U.S. Coast Guard, Commander,
Third Coast Guard District.

[FR Doc. 85-25431 Filed 10-23-85; 8:45 am]

BILLING CODE 4910-14-M

VETERANS ADMINISTRATION

38 CFR Part 21

**Veterans Education; Technical
Amendments**

AGENCY: Veterans Administration.

ACTION: Final Regulations.

SUMMARY: Several sections in 38 CFR (Code of Federal Regulations) contain incorrect references to other sections in 38 CFR. Another section has references to a Federal office which, due to reorganization, no longer exists. In order to make 38 CFR easier for the reader to use, these regulatory changes correct these errors.

EFFECTIVE DATE: October 17, 1985.

FOR FURTHER INFORMATION CONTACT:
June C. Schaeffer (225), Assistant
Director for Policy and Program
Administration, Education Service,
Department of Veterans Benefits,
Veterans Administration, 810 Vermont
Avenue NW., Washington, D.C. 20420,
(202) 389-2092.

SUPPLEMENTARY INFORMATION: 38 CFR 21.4136(g) and 21.4270(b) are amended to correct erroneous cross-references to other sections in 38 CFR. 38 CFR 21.4253(e) is amended to correct references to the Commissioner of Education, a position which no longer exists.

The VA (Veterans Administration) finds that good cause exists for making these regulations final without previous publication of a notice of proposed rulemaking. All the changes contained in these regulations are technical ones designed to correct erroneous references. There are no substantive changes. Public participation in this rulemaking is, therefore, unnecessary. Since a Notice of Proposed Rulemaking is unnecessary and will not be published, these changes do not come within the term "rule" as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2), and are therefore not subject to the requirements of that Act. Nevertheless, these regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612.

The VA has determined that these regulations do not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulations will not have a \$100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment,

productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance number for the program affected by this regulation is 64.111.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: October 17, 1985.

By direction of the Administrator.

Everett Alvarez, Jr.,
Deputy Administrator.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

38 CFR Part 21 is amended as follows:

§ 21.4136 [Amended]

1. In § 21.4136, paragraph (g)(2) is amended by removing the cite "§ 21.133" and inserting the cite "§ 21.260".

(38 U.S.C. 1682, 1787)

§ 21.4253 [Amended]

2. In § 21.4253, paragraph (e)(1) is amended by changing the title "Commissioner" to "Secretary" in two places and adding the cite "(38 U.S.C. 1775)" following "and;".

§ 21.4270 [Amended]

3. In § 21.4270(b), footnote 1 is amended by changing the cite "§ 21.4280" to "§ 21.4272(h)".

(38 U.S.C. 1788)

[FR Doc. 85-25324 Filed 10-23-85; 8:45 am]

BILLING CODE 8320-01-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-17

[FPMR Bulletin D-207]

Supplemental Space Contract

AGENCY: Public Buildings Service, GSA.

ACTION: Bulletin.

SUMMARY: This Bulletin provides information on the award of a space planning services contract to Geisler Smith Associates. This contractor will be responsible for developing supplemental space factors with GSA client agencies.

DATES: Effective date. This Bulletin is effective October 24, 1986. Expiration date: September 30, 1986.

FOR FURTHER INFORMATION CONTACT: Philip Kogan (202) 566-1875 or Gary A. Knoke (202) 535-8474 of the Space Management Division.

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this Bulletin will not impose unnecessary burdens on the economy or on individuals and, therefore, is not significant for the purpose of Executive Order 12044. (Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

41 CFR Chapter 101 is amended by adding the following Bulletin to the appendix at the end of Subchapter D. October 11, 1985.

GSA Bulletin FPMR D-207, Public Buildings and Space

To: Heads of Federal Agencies
Subject: Supplemental Space Contract

1. *Purpose.* FPMR Temporary Regulation D-71, Work Space Management Reform, requires the development of supplemental space factors for each bureau and operational unit housed in GSA space. This bulletin provides information on the award of a contract to Geisler Smith Associates for the purpose of assisting GSA in the development of these factors.

2. *Expiration date.* This bulletin expires on September 30, 1986.

3. *Background.* On September 27, 1985, the General Services Administration (GSA) awarded a contract to Geisler Smith Associates for the performance of space planning services. Geisler Smith was hired to assist GSA's Office of Real Estate in the development of supplemental space factors required by FPMR Temporary Regulation D-71, Work Space Management Reform. Factors are required to be developed by March 31, 1986, for each bureau or operational unit housed in GSA space. Once developed, the factors will remain in effect until or unless agency missions change and will be used to determine short term requirements contained in Standard Forms 81, Request for Space, received from agencies as well as long term planning needs reflected in community surveys and prospectus projects.

Geisler Smith Associates has strong experience in space planning and programming as well as facility planning and received a competitive award in a joint venture with Capital Program Management, Inc. The term of the contract is one year although it is expected that most of the work will be completed by March 31, 1986.

4. *Scope.* Geisler Smith's initial task requires policy familiarization through a series of briefings presented by GSA.

The contractor will then develop material for supplemental space workshops to be presented to GSA's client agencies during October and November 1985. Development of supplemental space factors will follow completion of the workshops. Representatives of Geisler Smith Associates will be contacting officials of GSA client agencies in October to arrange attendance at workshops and begin the process of developing supplemental space factors.

Bill Sullivan,

Commissioner, Public Buildings Service.

[FR Doc. 85-25326 Filed 10-23-85; 8:45 am]

BILLING CODE 6820-23-M

41 CFR Part 101-40

[FPMR Temp. Reg. A-25, Supp. 1]

Travel and Transportation Expense Payment System Using Contractor-Issued Charge Cards, Government Travel System (GTS) Accounts, and Travelers Checks

AGENCY: Office of Federal Supply and Services, GSA.

ACTION: Temporary regulation.

SUMMARY: This supplement amends FPMR Temporary Regulation A-25 to extend the expiration date and to amend certain provisions of the regulation that reflect GSA's experience gained from Federal agency use of the program. Accordingly, this supplement (a) adds "car rentals" to paragraph 1, (b) clarifies the applicability of the regulation as to participating agency employees, (c) clarifies Diners Club billing and payment procedures, and (d) provides updated telephone numbers for reporting lost or stolen Diners Club charge cards and travelers checks.

DATES: Effective date: This regulation is effective October 24, 1985.

Expiration date: This regulation expires 1 year from date of publication in the Federal Register, unless otherwise canceled or extended.

ADDRESS: Comments should be addressed to: General Services Administration (FT), Washington, DC 20406.

FOR FURTHER INFORMATION CONTACT: Mr. Charles T. Angelo, Travel and Transportation Services Division (FTE), FTS 557-1264/(703) 557-1264.

SUPPLEMENTARY INFORMATION: GSA has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of \$100 million or more, a

major increase in costs to consumers or others, or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

In 41 CFR Chapter 101, the following temporary regulation is added to the appendix at the end of Subchapter A to read as follows:

Federal Property Management Regulations Temporary Regulation A-25, Supplement 1

September 25, 1985.

To: Heads of Federal agencies

Subject: Travel and transportation expense payment system using contractor-issued charge cards, Government travel system (GTS) accounts, and travelers checks.

1. *Purpose.* This supplement amends FPMR Temporary Regulation A-25, to extend the expiration date, add and revise provisions of the regulation in view of the experience of the General Services Administration (GSA) with Federal agency use of the travel and transportation expense payment system, and update telephone numbers listed in paragraph 4.

2. *Effective date.* This regulation is effective October 24, 1985.

3. *Expiration date.* This regulation expires 1 year from date of publication in the Federal Register, unless otherwise canceled or extended.

4. *Explanation of changes.*

a. Paragraph 1 is revised to read as follows:

"1. *Purpose.* This regulation prescribes policies and procedures for a travel and transportation expense payment system which provides for the use of General Services Administration (GSA) contractor-issued charge cards, Government travel system (GTS) accounts, and travelers checks by Federal agencies for the procurement of passenger transportation services, car rentals, payment to commercial facilities for subsistence (lodging, meals, etc.) and miscellaneous travel and transportation expenses during official travel."

b. Paragraph 5 is revised to read as follows:

"5. *Applicability.* This regulation applies to Federal agencies and departments that have voluntarily agreed to participate in GSA's travel and transportation expense payment

system using contractor-issued charge cards, GTS accounts, and travelers checks. The provisions of this regulation also apply to employees of participating agencies."

c. Subparagraph c of paragraph 9 is revised to read as follows:

"c. *Monthly contractor bills and payments.* The terms of the contract with Citicorp/Diners Club, Inc., require billing and payment to be performed in the following manner. The contractor bills charges directly to the individual employee each month. Charges billed to the individual employee are due and must be paid in full within 25 calendar days of the billing date. There are no interest or late charges and extended or partial payment is not permitted. Questions concerning billings or payments should be directed to the contractor at: 800-525-5289 or 303-799-6670."

d. The telephone numbers contained in paragraph 11 are revised to read as follows:

"In the continental U.S., 800-525-5289 or 800-525-9150

In Alaska and Hawaii, 800-525-7470

In Canada, 800-268-6454

In Puerto Rico, 137-800-525-9040

In the Caribbean, 809-295-7181

In Colorado (except Denver), 800-332-9340

In metropolitan Denver, 799-1711".

e. The telephone numbers contained in paragraph 15 are revised to read as follows:

"In the continental U.S., 800-645-6566

Outside the continental U.S. 813-623-1709

In the Middle East and Africa call the Diners Club London office, 44-1-438-1414

In Latin America, 813-626-4444".

5. *Comments and recommendations.* Comments and recommendations on

using the travel and transportation expense payment system or on this regulation may be sent to the General Services Administration (FT), Washington, DC 20406, within 90 calendar days of publication.

Terence C. Golden,

Administrator of General Services.

[FR Doc. 85-25403 Filed 10-23-85; 8:45 am]

BILLING CODE 6820-24-M

41 CFR Part 101-40

[FPMR Temp. Reg. A-22, Supp. 4]

Use of Contract Airline Service Between Selected City-Pairs

AGENCY: Office of Federal Supply and Services, GSA.

ACTION: Temporary regulation.

SUMMARY: This supplement amends FPMR Temp. Reg. A-22 by incorporating the provisions of the new airline city-pairs contracts effective October 1, 1985. Furthermore, this supplement cancels supplements 2 and 3 and consolidates into supplement 4 the provisions of paragraphs 7, 9, 13, and 18 which were contained in supplements 2 and/or 3. Paragraphs 5, 8, 10, and 11 are revised for clarification or to incorporate the provision in the new contracts that reduces the number of exceptions to the use of the contract airlines.

DATES: Effective date: October 1, 1985.

Expiration date: September 30, 1986, unless sooner canceled or revised.

FOR FURTHER INFORMATION CONTACT: Charles T. Angelo, Director, Travel and Transportation Services Division (FTS 557-1261/(703)577-1261).

SUPPLEMENTARY INFORMATION: GSA has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of \$100 million or more, a major increase in costs to consumers or others, or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101-40

Freight, Government property management, Moving of household goods, Office relocations, Transportation.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

In 41 CFR Chapter 101, the following temporary regulation is added to the appendix at the end of Subchapter A to read as follows:

Federal Property Management Regulations; Temporary Regulation A-22, Supplement 4

October 9, 1985.

To: Heads of Federal agencies

Subject: Use of contract airline service between selected city-pairs.

1. *Purpose.* This supplement amends FPMR Temp. Reg. A-22 by incorporating provisions of the new airline city-pairs contracts effective October 1, 1985. Furthermore, this supplement cancels supplements 2 and 3 and consolidates into supplement 4 the provisions of paragraphs 7, 9, 13, and 18 which were published in supplements 2 and/or 3.

The provisions of paragraphs 1, 4, 6, 12, 14, 15, 16, and 17 in the basic regulation remain unchanged. Paragraphs 5, 8, 10, and 11 are revised in this supplement for clarity or to incorporate provisions of the new contracts.

2. *Effective date.* This regulation is effective October 1, 1985.

3. *Expiration date.* This regulation expires September 30, 1986, unless sooner canceled or revised.

4. *Explanation of changes.*

a. Paragraph 5 is revised to read as follows:

5. *Scope.* This regulation prescribes policies and procedures governing the use of specified commercial airlines (hereinafter referred to as the contractor) under contractual arrangements with the General Services Administration (GSA) to furnish Government employees and any other person authorized to travel at Government expense with scheduled air passenger transportation service between certain domestic and international cities.

a. This regulation is mandatory for all Executive agencies (except the Department of Defense) and other Federal agencies subject to the authority of the administrator of General Services pursuant to the Federal Property and Administrative Services Act of 1949, as amended, and 5 U.S.C. 5701 and 5721, et seq. (uniformed personnel and civilian employees of the Department of Defense are subject to the procedures established in the Military Traffic Management Regulations 55-355/NAVSUPINST 4600.70/MCO P4600.14A/DLAR 4500.3.)

b. The following personnel are exempt from the mandatory use of the airline contracts; however, exempt personnel are authorized to obtain services under this regulation at the option of the contractor when seating space is available:

(1) Uniformed members of the Public Health Service, the National Oceanic and Atmospheric Administration, and the U.S. Coast Guard;

(2) Members and employees of the U.S. Congress;

(3) Employees of the judicial branch of the Government;

(4) Employees of the U.S. Postal Service;

(5) Foreign service officers;

(6) Cost-reimbursable contractors working for the Government; and

(7) Employees of any agency having independent statutory authority to prescribe travel allowances and who are not subject to the provisions of 5 U.S.C. 5701 through 5709.

c. Rail or bus service may be used when determined by the agency to be

advantageous to the Government, cost, energy, and other factors considered, and when compatible with the requirements of the official travel. (Ch. 1-2.2c(1)(b)(iii), Federal Travel Regulations.)

b. Paragraph 7 is brought forward unchanged from supplement 3 and reads as follows:

7. *Responsibility of the contract airline.*

a. The contractor is not required to furnish services if, at the time of the request for service, the scheduled aircraft is fully loaded; nor shall the contractor be required to furnish any additional aircraft to satisfy the transportation requirement. However, the contractor will provide the official Government traveler with services that are the same as those provided to its commercial passengers in scheduled jet coach service, subject to the rules and procedures published in the air carrier's tariff(s) on file with the Airline Tariff Publishing Company or contained in the contractor's contract of carriage.

b. The contractor is to use the designators "YCA" (unrestricted contract fare) or "MCA" (restricted contract fare) in describing fares.

c. Paragraph 8 is revised to read as follows:

8. *Procedures for obtaining service.*

a. Except as provided in the following subpars. b, c, and g, contract air service shall be ordered by the issuance of a U.S. Government Transportation Request (GTR) (Standard Form 1169), either directly to the contractor or indirectly to a travel agent or SATO. (See par. 9 on the use of travel agents or SATO's.)

b. Agencies and departments participating in GSA's travel and transportation expense payment system (see GSA FPMR Temp. Reg. A-25) are authorized to use GSA contractor-issued charge cards described in GSA FPMR Temp. Reg. A-25, to obtain YCA or MCA contract airline fares. Charge cards may be presented to the contractor, SATO's, travel agents (see par. 9), or agency travel officers, as appropriate.

c. When a traveler uses cash to procure service under FPMR 101-41.203-2, the traveler shall be prepared to authenticate the trip as official travel. When cash is used, the contract airlines listed in the Federal Travel Directory (FTD) have the option of furnishing services at either the contract or noncontract fare. If only one contract is awarded for a city-pair and the contractor does not provide a contract fare with the use of cash, the traveler shall procure service from an airline offering the lowest fare. If more than one

contract has been awarded for a city-pair, the traveler shall observe the order of carrier succession in selecting a contractor which provides a contract fare with the use of cash. If none of the contractors provides a contract fare with the use of cash, the traveler shall procure service from an airline offering the lowest fare. Cash or personal credit cards shall not be used to circumvent the Government's contract with the airlines.

d. When a reservation for contract air service is requested, the fare basis shall be identified as "YCA" or "MCA," as appropriate, and the contractor's ticket agent shall be instructed to apply the appropriate fare basis and contract fare. Agencies using teletype ticketing equipment shall examine airline tickets to determine if the tickets contain the correct fare or whether they should be canceled and new tickets issued. Tickets picked up at the airline ticket office shall be verified to ensure that the proper fare basis is shown on the ticket.

e. Contract fares apply only for the city-pairs named in the FTD and are not applicable to or from intermediate points. The contract fares, however, are applicable in conjunction with other published fares or other contract fares.

f. When a city-pair published in the FTD indicates that only one contract is awarded and the contractor subsequently offers a fare lower than its contract fare, the ordering agency may elect to use the lower fare if qualifications for obtaining the lower fare are compatible with the agency's travel requirements.

g. Cost-reimbursable contractors performing direct, reimbursable travel in performance of a Government contract and with proper identification from the authorizing agency are eligible and authorized to obtain contract fares if the contract airline agrees to the arrangement. Contract fares may be obtained by cost-reimbursable contractors through the use of a GTR, cash, or a personal credit card. The FTD identifies the contract airlines that agree to furnish transportation services to cost-reimbursable contractors at the GSA contract discount fares when the conditions as noted in the FTD are met.

d. Paragraph 9 is brought forward unchanged from supplement 3 and reads as follows:

9. *Use of travel agents and Scheduled Airline Traffic Offices (SATO's).* GSA has entered into contracts with various commercial travel agents and into agreements with SATO's to provide travel management services for Federal agencies. These travel agents and SATO's are responsible for providing

and arranging all travel services of participating agencies.

a. When GTR's are used, the travel agents and SATO's are assigned GTR numbers by each participating Federal agency, and the assigned GTR number shall be shown on all transportation tickets issued.

b. When GSA contractor-issued charge cards or Government Travel System (GTS) accounts are used, travel management services will be furnished as provided in FPMR Temp. Reg. A-25. (See the Federal Travel Directory for the location of travel agents and SATO's.)

e. Paragraph 10 is revised to read as follows:

10. *Progressive awards for the same city-pair.*

a. When progressive contracts are awarded for a city-pair, the contractors are listed in the FTD in priority order from the carrier (primary) offering the lower YCA fare to the carrier (secondary) offering the next higher YCA fare. Except as provided in the following subpars. (1) and (2), agencies shall obtain contract service in the order of carrier priority specified in the FTD. Where a carrier offers both a YCA fare and an MCA fare for the same city-pair, the FTD lists both fares and describes the restrictions that apply to the MCA fare. The availability of a lower MCA fare by a secondary carrier does not remove the Government's obligation to request service from the primary carrier. Agencies may use the secondary carrier's MCA fare only after the exceptions in the following subpars. (1) and (2), as applied to the primary carrier, indicate that the use of the secondary carrier is justified. For example, if the primary carrier listed in the FTD offers a YCA fare of \$90 and the secondary carrier offers both a YCA fare of \$100 and an MCA fare of \$80, the MCA fare of \$80 may be used only if the primary carrier with the lower YCA fare of \$90 is displaced for reasons noted in the following subpars. (1) and (2).

(1) If service by contract airlines is provided at different airports for the same city-pair, the lowest overall cost, including the YCA fare, lost productive time, and ground transportation expense, will determine which contract airline will be used.

(2) The secondary carrier shall be used when the primary carrier cannot provide seating space or when its scheduled flights are not available in time to accomplish the purpose of travel, would require overnight lodging, or are inconsistent with the Government's policy of scheduling travel to the maximum extent practicable during normal working hours (for further

information, see the Federal Personnel Manual, Supplement 990-2).

b. When a contract airline offers the general public a fare that is lower than its contract fare, the ordering agency may elect to use the lower noncontract fare provided that the qualifications for obtaining the lower fare are compatible with the agency's travel requirements and provided that a comparison of total costs as prescribed in subpar. 11b(2) justifies a change in the order of carrier priority. By offering the general public a fare lower than its contract fare, the contractor assumes the status of a noncontract carrier.

f. Paragraph 11 is revised to read as follows:

11. *Use of noncontract airline carriers for listed city-pairs.*

a. Heads of agencies are authorized to approve the use of noncontract airlines for city-pairs listed in the FTD when their use is justified under the conditions specified in subpar. b, below. This authority may be delegated provided appropriate guidelines in the form of regulations or other written instructions are furnished the designee. Redesignations of authority shall be limited. The delegation and redelegation of authority shall be held to as high an administrative level as practicable to ensure adequate consideration and review of the circumstances requiring the use of noncontract airlines. Justification for the use of noncontract airlines will be authorized on individual travel orders (if known before travel begins) or approved on vouchers (if not known before travel begins).

b. Use of noncontract airlines for city-pairs listed in the FTD is justified when:

(1) Seating space or scheduled flights of the contract airlines are not available in time to accomplish the purpose of travel;

(2) A cost comparison substantiates that the sum of the contract fare and such cost factors as ground transportation, lost productive time, allowable overtime, and additional overnight lodging exceeds the total cost of the lowest unrestricted coach fare (i.e., the standard jet coach fare—"Y" or equivalent class of service) plus the same cost factors as may be associated with such fare (see note); or

Note.—In comparing transportation costs, promotional fares such as "Super Saver" or restricted fares such as "YDG" or "MDG" will not be used. Comparison will be made using a noncontract airline's standard coach fare.

(3) The contract airline's flight schedule for the travel involved is inconsistent with the Government's policy of scheduling travel to the

maximum extent practicable during normal working hours.

g. Paragraph 13 is brought forward unchanged from supplement 2 and reads as follows:

13. Reserved.

h. Paragraph 18 is brought forward unchanged from supplement 3 and reads as follows:

18. Reserved.

Paul Trause,

Acting Administrator of General Services.

[FR Doc. 85-25416 Filed 10-23-85; 8:45 am]

BILLING CODE 6820-24-M

41 CFR Part 105-64

[ADM 7900.4]

Privacy Act of 1974

AGENCY: General Services Administration.

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) has revised 41 CFR Part 105-64 to clarify and modify certain provisions of the GSA regulations implementing the Privacy Act of 1974 and to reflect organizational changes within GSA. These changes will help individuals requesting records and offices handling these requests.

EFFECTIVE DATE: October 24, 1985.

ADDRESSES: General Service Administration (ATRAI), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Mr. William W. Hiebert, GSA Privacy Act Officer (202-535-7647).

SUPPLEMENTARY INFORMATION: A proposed rule was published in the Federal Register on March 4, 1985 (50 FR 8641).

Under subsection 105-64.201, Conditions of disclosure, the paragraph permitting certain records to be disclosed to a consumer reporting agency without written consent is added. On November 4, 1983, a new system of records was published in the Federal Register to allow GSA to assemble information on individuals who are indebted to the Government. This system allows disclosures of records to consumer reporting agencies.

On April 23, 1979, GSA published a final rule in the Federal Register (44 FR 23835) amending 41 CFR 105-64 to exempt the system of records GSA/ADM-24, Investigation of Personnel Security Case Files, from subsections of the Privacy Act of 1974. On February 8, 1980, GSA published a notice in the

Federal Register (45 FR 8722) to divide this system into two systems.

Investigation case files are still covered by GSA/ADM-24, while personnel security case files are covered by GSA/HRO-37, Security Staff Files. On November 30, 1981, the name was changed from Security Staff Files to Security Files (46 FR 58185). Exemptions for security files authorized by 41 CFR Part 105-64 were included in the system of records notice for GSA/HRO-37, but a revision of 41 CFR 105-64.602, identifying the new system of records was not made.

The General Services Administration has determined that this rule is not a major rule for the purpose of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of \$100 million or more; a major increase in costs to consumers or others; or significant adverse effects. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 105-64

Privacy.

For the reasons set forth in the preamble, 41 CFR Part 105-64 is amended as follows:

PART 105-64—REGULATIONS IMPLEMENTING THE PRIVACY ACT OF 1974

1. Part 105-64 is revised to read as follows:

- Sec.
105-64.000 Scope of part.
105-64.001 Purpose.
105-64.002 Definitions.

Subpart 105-64.1—General Policy

- 105-64.101 Maintenance of records.
105-64.101-1 Collection and use.
105-64.101-2 Standards of accuracy.
105-64.101-3 Rules of conduct.
105-64.101-4 Safeguarding systems of records.
105-64.101-5 Inconsistent directives of GSA superseded.
105-64.102 Records of other agencies.
105-64.103 Subpoenas and other legal demands.

Subpart 105-64.2—Disclosure of Records

- 105-64.201 Conditions of disclosure.
105-64.202 Procedures for disclosure.
105-64.203 Accounting of disclosure.

Subpart 105-64.3—Individual Access to Records

- 105-64.301 Access procedures.
105-64.301-1 Form of requests.
105-64.301-2 Special requirement for medical records.
105-64.301-3 Granting access.
105-64.301-4 Denials of access.
105-64.301-5 Appeal of denial of access within GSA.
105-64.301-6 Geographic composition; addresses and telephone numbers of regional Administrative Services Division directors.
105-64.302 Fees.
105-64.302-1 Records available at a fee.
105-64.302-2 Additional copies.
105-64.302-3 Waiver of fee.
105-64.302-4 Prepayment of fees over \$25.
105-64.302-5 Form of payment.
105-64.302-6 Reproduction fee schedule.

Subpart 105-64.4—Requests to Amend Records

- 105-64.401 Submission of requests to amend records.
105-64.402 Review of requests to amend records.
105-64.403 Approval of requests to amend.
105-64.404 Denial of request to amend.
105-64.405 Agreement to alternative amendments.
105-64.406 Appeal of denial of request to amend a record.
105-64.407 Statements of disagreement.
105-64.408 Judicial review.

Subpart 105-64.5—Reporting New Systems and Altering Existing Systems

- 105-64.501 Reporting requirement.
105-64.502 Federal Register notice of establishment of new system or alteration of existing system.
105-64.503 Effective date of new systems of records or alteration of an existing system of records.

Subpart 105-64.6—Exemptions

- 105-64.601 General exemptions.
105-64.602 Specific exemptions.

Subpart 105-64.7—Assistance and Referrals

- 105-64.701 Requests for assistance and referral.
Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)); 88 Stat. 1897 (5 U.S.C. 552a).

PART 105-64—REGULATIONS IMPLEMENTING THE PRIVACY ACT OF 1974

§ 105-64.000 Scope of part.

The policies and procedures for collecting, using, and disseminating records maintained by GSA are subject to 5 U.S.C. 552a, and defined in § 105-64.002. Policies and procedures governing availability of records in general are in Parts 105-60 and 61 of this chapter. This part also covers exemptions from disclosing personal information; procedures guiding persons who wish to obtain information, or to inspect or correct the content of records;

accounting for disclosure of information; requirements for medical records; and fees.

§ 105-64.001 Purpose.

This part implements 5 U.S.C. 552a (Pub. L. 93-579), known as the Privacy Act of 1974 (referred to as the Act). This part states procedures for notifying an individual of a GSA system of records containing a record pertaining to him or her, procedures for gaining access to or contesting the content of records, and other procedures for carrying out the Act.

§ 105-64.002 Definitions.

For the purpose of this Part 105-64, the terms listed below are defined as follows:

- (a) Agency means agency as defined in 5 U.S.C. 552(e);
(b) Individual means a citizen of the United States or a legal alien admitted for permanent residence;
(c) Maintain means keep, collect, use, and disseminate;
(d) A record means any item, collection, or grouping of information an agency maintains about a person, including, but not limited to, his or her educational background, financial transactions, medical history, and employment or criminal history, and that contains his or her name or other identifying number of symbols such as a fingerprint, voiceprint, or photograph;
(e) A system of records means any group of records under the control of the agency from which information is retrieved by a person's name or by an identifying number, symbols, or other identifiers assigned to that individual;
(f) A statistical record means an item of information maintained for statistical research or reporting purposes that is not used in making any determination about an identifiable person, except as provided by Section 8 of Title 13 U.S.C.;
(g) Routine use means using a record for the purpose for which it was intended;

(h) System manager means the GSA employee who maintains a system of records and who collects, uses, and disseminates the information in it;

(i) The subject individual means the person named or discussed in a record or the person to whom a record refers;

(j) Disclosure means transferring a record, a copy of a record, or the information contained in a record to someone other than the subject individual, or the reviewing of a record by someone other than the subject individual;

(k) Access means a transfer of a record, a copy of a record, or the

information in a record to the subject individual, or the review of a record by the subject individual; and

(l) Solicitation means a request by an officer or employee of GSA for a person to provide information about himself or herself.

Subpart 105-64.1—General Policy

§ 105.64.101 Maintenance of records.

§ 105.64.101-1 Collection and use.

(a) *General.* The system manager (also called the manager) should collect information used for determining an individual's rights, benefits, or privileges under GSA programs directly from the subject individual if practical. The system manager should ensure that information collected is used only as intended by the Act and these regulations.

(b) *Soliciting information.* Manager must ensure that when information is solicited, the person is informed of the authority for collecting it; whether providing it is mandatory or voluntary; the purpose for which it will be used; routine uses of the information; and the effect on the individual, if any, of not providing the information. Heads of Services and Staff Offices and Regional Administrators must ensure that forms used to solicit information comply with the Act and these regulations.

(c) *Soliciting a social security number.* Before requesting a person to disclose his or her social security number, ensure either:

(1) The disclosure is required by Federal statute, or;

(2) Disclosure is required under a statute or regulation adopted before January 1, 1975, to verify the person's identity, and that it was part of a system of records in existence before January 1, 1975.

If soliciting a social security number is authorized under paragraph (c) (1) or (2) of this section, inform the person beforehand whether the disclosure is mandatory or voluntary, by what legal or other authority the number is requested, and the use that is to be made of it.

(d) *Soliciting information from third parties.* Officers or employees must inform third parties requested to provide information about another person of the reason for collecting the information.

§ 105.64.101-2 Standards of accuracy.

Managers should ensure that the records used by the Agency to make determinations about an individual are maintained with the accuracy, relevance, timeliness, and completeness

needed to ensure fairness to the individual.

§ 105.64.101-3 Rules of conduct.

Those who design, develop, operate, or maintain a system of records, or any record, must review 5 U.S.C. 552a and the regulations in this part and follow 41 CFR Part 105-735, Standards of Conduct, for protecting personal information.

§ 105.64.101-4 Safeguarding systems of records.

Managers must ensure that administrative, technical, and physical safeguards are established to ensure the security and confidentiality of records and to protect against possible threats or hazards which could be harmful, embarrassing, inconvenient, or unfair to any individual. They must protect personnel information contained in manual and automated systems of records by using the following safeguards:

(a) Storing official personnel folders and work folders in a lockable filing cabinet when not in use. The system manager may use an alternative storage system if it provides the same security as a locked cabinet.

(b) Designating other sensitive records that need safeguards similar to those described in paragraph (a) of this section.

(c) Permitting access to and use of automated or manual personnel records only to persons whose official duties require it, or to a subject individual or to his or her representative.

§ 105.64.101-5 Inconsistent directives of GSA superseded.

This Part 105-64 applies or takes precedence when any GSA directive disagrees with it.

§ 105.64.102 Records of other agencies.

If a GSA employee receives a request to review records that are the primary responsibility of another agency, but are maintained by or in the temporary possession of GSA, the employee should consult with the other agency before releasing the records. Records in the custody of GSA that are the responsibility of the Office of Personnel Management (OPM) are governed by rules issued by OPM under the Privacy Act.

§ 105.64.103 Subpoenas and other legal demands.

Access to systems of records by subpoena or other legal process must meet the provisions of Subpart 105-60.6 of this chapter.

Subpart 105-64.2—Disclosure of records.

§ 105-64.201 Conditions of disclosure.

GSA employees may not disclose any record to a person or another agency without the express written consent of the subject individual unless the disclosure is:

(a) To GSA officials or employees who need the information to perform their official duties;

(b) Required by the Freedom of Information Act;

(c) For a routine use identified in the Federal Register;

(d) For Bureau of the Census use under Title 13 of the United States Code;

(e) To someone who has assured GSA in writing that the record is to be used solely for statistical research or reporting, and if it does not identify an individual;

(f) To the National Archives of the United States as a record that has historical or other value warranting permanent retention;

(g) To another agency or instrumentality under the jurisdiction or control of the United States for a civil or criminal law enforcement activity, if the head of the agency or instrumentality or the designated representative has made a written request to GSA specifying the part needed and the law enforcement agency seeking it;

(h) To a person showing compelling circumstances affecting someone's health and safety not necessarily the subject individual (Upon disclosure, a notification must be sent to the subject individual's last known address);

(i) To either House of Congress or to a committee or subcommittee (joint or of either House), to the extent that the matter falls within its jurisdiction;

(j) To the Comptroller General or an authorized representative while performing the duties of the General Accounting Office;

(k) Under an order of a court of competent jurisdiction; or

(l) To a consumer reporting agency under section 3(d) of the Federal Claims Collection Act of 1966 (31 U.S.C. 3711(f)(1)).

§ 105-64.202 Procedures for disclosure.

(a) On receiving a request to disclose a record, the manager should verify the requester's right to obtain the information under § 105-64.201. Upon verification, the manager may make the records available.

(b) If the manager decides the record can't be disclosed, he or she must inform the requester in writing and state that the denial can be appealed to the GSA

Privacy Act Officer, General Services Administration (ATRAI), for a final decision.

§ 105-64.203 Accounting of disclosure.

(a) Except for disclosures made under § 105-64.201 (a) and (b), an accurate account of each disclosure is kept and retained for 5 years or for the life of the record, whichever is longer. The date, reason, and type of information disclosed, as well as the name and address of the person or agency to whom you disclosed it are noted.

(b) The manager also keeps with the account of information disclosed:

- (1) A statement justifying the disclosure;
- (2) Any documentation related to disclosing a record for statistical or law enforcement use; and
- (3) The written consent of the person concerned.

(c) Except when records are disclosed to agencies or instrumentalities for law enforcement under § 105-64.201(g) or from exempt systems (see Subpart 105-64.6), accounts of information disclosed must be opened to the person concerned, upon request. Procedures to request such access are given in the following subpart.

Subpart 105-64.3—Individual Access to Records

§ 105-64.301 Access procedures.

§ 105-64.301-1 Form of requests.

(a) A person who wants to see a record or any information concerning him or her that is contained in a system or records maintained in the GSA Central Office should send a written request to the GSA Privacy Act Officer, General Services Administration (ATRAI), Washington, DC 20405. For records maintained in GSA regional offices, send the request to the Director, Administrative Services Division at the address shown in § 105-64.301-6.

(b) Requests must be made in writing and must be labeled Privacy Act Request both on the letter and on the envelope. The letter should contain the full name and identifying number of the system as published in the *Federal Register*; the full name and address of the subject individual; a brief description of the nature, time, place, and circumstances of the person's association with GSA; and any other information that would indicate whether the information is in the system of records. The 10-workday time limit for the agency to reply under § 105-64.301-3, begins when a request is received in the office of the official identified in this section.

(c) Managers may accept oral requests for access, if the requester is properly identified.

§ 105-64.301-2 Special requirements for medical records.

(a) A manager who receives a request for access to official medical records belonging to the Office of Personnel Management and described in Chapter 339, Federal Personnel Manual (records about entrance qualification, fitness for duty, or records filed in the official personnel folder), should refer the matter to a Federal medical officer for a decision under this section. If no medical officer is available, the manager should send the request and the medical reports to the Office of Personnel Management for a decision.

(b) If the Federal medical officer believes the medical records requested by the subject individual discuss a condition that a physician would hesitate to reveal to the person, the manager may release the information only to a physician designated in writing by the subject individual, his or her guardian, or conservator. If the records contain information the physician would likely disclose to the person, the information may be released to anyone the person authorizes in writing to receive it.

§ 105-64.301-3 Granting access.

(a) Upon receiving a request for access to nonexempt records, the manager must make them available to the subject individual or acknowledge the request within 10 workdays after it is received, stating when the records will be available.

(b) If the manager expects a delay of more than the 10 days allowed, he or she should state the reason why in the acknowledgement.

(c) If a request for access does not contain enough information to find the records, the manager should request additional information from the individual and is allowed 10 more workdays after receiving it to make the records available or acknowledge receiving the request.

(d) Records are available during normal business hours at the offices where the records are maintained. Requesters should be prepared to identify themselves by signature and to show other identification verifying their signature.

(e) Managers may permit an individual to examine the original of a nonexempt record and, if asked, provide the person with a copy of the record. Fees are charged only for copies given to the person, not for copies made for the agency's convenience.

(f) A requester may pick up a record in person or receive it by mail, directed to an address provided in the request. The manager should not give a record to a third party to deliver to the subject individual, except medical records as outlined in § 105-64.301-2 or as described in paragraph (g) of this section.

(g) If a person wants to have someone else accompany him or her while reviewing a record or when obtaining a copy of it, he or she must first sign a statement authorizing the disclosure of the record. The system manager shall maintain this statement with the record.

(h) The procedure to review the account of disclosures is the same as the procedures for reviewing a record.

§ 105-64.301-4 Denials of access.

(a) A manager may deny access to a record only if the information is being compiled in reasonable anticipation of a civil action or proceeding as provided under 5 U.S.C. 552(d)(5) or if rules published in the *Federal Register* state that it is in a system of records that may not be disclosed. These systems are described in Subpart 105-64.6.

(b) If a manager receives a request for access to a record in an exempt system of record, he or she should forward it to the Head of the Service or Staff Office or Regional Administrator, attaching an explanation and recommending the request be denied or granted.

(c) If the manager is the Head of a Service or Staff Office or a Regional Administrator, he or she retains the responsibility for granting or denying the request.

(d) The Head of the Service or Staff Office or Regional Administrator, in consultation with legal counsel and other officials concerned, should decide whether the requested record is exempt from disclosure and,

(1) If the record is not exempt, notify the system manager to grant the request under § 105-64.301-3; or

(2) If the record is part of an exempt system he or she should:

(i) Notify the requester that the request is denied, explain why it is denied, and inform the requester of his or her right to have GSA review the decision; or

(ii) Notify the manager to make the record available under § 105-64.301-3, even though it is in an exempted system.

(e) A copy of any denial of a request should be sent to the GSA Privacy Act Officer (ATRAI).

§ 105-64.301-5 Appeal of denial of access within GSA.

(a) A requester who is denied access, in whole or in part, to records pertaining to him or her may file an administrative appeal. Appeals should be addressed to the GSA Privacy Act Officer, General Services Administration (ATRAI), Washington, DC 20405, regardless whether the denial was made by a Central Office or a regional official.

(b) Each appeal to the Privacy Act Officer must be in writing. The appeal should be marked Privacy Act-Access Appeal, on the face of the letter and on the envelope.

(c) On receiving an appeal, the Privacy Act Officer consults with the manager, the official who made the denial, legal counsel, and other officials concerned. If the Privacy Act Officer, after consultation, decides to grant the request, he or she notifies the manager in writing to grant access to the record under § 105-64.301-3, or grants access himself or herself and notifies the requester of that action.

(d) If the Privacy Act Officer decides the appeal should be rejected, he or she sends the request file and any appeal, with a recommendation, to the Deputy Administrator for a final administrative decision.

(e) If the Deputy Administrator decides to grant a request, he or she promptly instructs the system manager in writing to grant access to the record under § 105-64.301-3. The Deputy Administrator sends a copy of the instructions to the Privacy Act Officer, who notifies the requester.

(f) If the Deputy Administrator rejects an appeal, he or she should promptly notify the requester in writing. This action constitutes the final administrative decision on the request and should state:

(1) The reason for rejecting the appeal; and

(2) That the requester has the right to have a court review the final decision under § 105-64.408.

(g) The final decision must be made within 30 workdays from the date the appeal is received by the Privacy Act Officer. The Deputy Administrator may extend the time limit by notifying the requester in writing before the 30 days are up. The Deputy Administrator's letter should explain why the time was extended.

§ 105-64.301-6 Geographic composition, addresses and telephone numbers for regional Administrative Services Division directors.**Region 1**

Boston (includes Connecticut, Maine, Massachusetts, New Hampshire, Rhode

Island, and Vermont) Telephone: 617-223-5212

Director, Administrative Services Division, General Services Administration (1BR), John W. McCormack Post Office and Courthouse, Boston, MA 02109

Region 2

New York (includes New Jersey, New York, the Commonwealth of Puerto Rico, and the Virgin Islands) Telephone: 212-264-8262

Director, Administrative Services Division, General Services Administration (2BR), 28 Federal Plaza, New York, NY 10278

Region 3

Philadelphia (includes Delaware, Maryland, Pennsylvania, Virginia, and West Virginia with the exception of the National Capital Region) Telephone: 215-597-7926

Director, Administrative Services Division, General Services Administration (3BR), Ninth and Market Streets, Philadelphia, PA 19107

Region 4

Atlanta (includes Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee) Telephone: 404-221-3240

Director, Administrative Services Division, General Services Administration (4BR), 75 Spring Street, SW, Atlanta, GA 30303

Region 5

Chicago (includes Illinois, Indiana, Michigan, Ohio, Minnesota, and Wisconsin) Telephone: 312-353-8421

Director, Administrative Services Division, General Services Administration (5BR), 230 South Dearborn Street, Chicago, IL 60604

Region 6

Kansas City (includes Iowa, Kansas, Missouri, and Nebraska) Telephone: 816-374-7581

Director, Administrative Services Division, General Services Administration (6BR), 1500 East Bannister Road, Kansas City, MO 64131

Region 7

Fort Worth (includes Arkansas, Louisiana, New Mexico, Texas, and Oklahoma) Telephone: 817-334-2350

Director, Administrative Services Division, General Services Administration (7BR), 819 Taylor Street, Fort Worth, TX 76102

Region 8

Denver (includes Colorado, North Dakota, South Dakota, Montana, Utah, and Wyoming) Telephone: 303-776-2231

Director, Administrative Services Division, General Services Administration (8BR), Building 41, Denver Federal Center, Denver, CO 80225

Region 9

San Francisco (includes Hawaii, California, Nevada, and Arizona) Telephone: 415-556-9130

Director, Administrative Services Division, General Services Administration (9BR), 525 Market Street, San Francisco, CA 95105

Region 10

Auburn (includes Alaska, Idaho, Oregon, and Washington) Telephone: 206-931-7128

Director, Administrative Services Division, General Services Administration (10BR), GSA Center, Auburn, WA 98002

National Capital Region

Washington, DC (includes the District of Columbia, the counties of Montgomery and Prince Georges in Maryland; the city of Alexandria and the counties of Arlington, Fairfax, Loudoun, and Prince William in Virginia) Telephone: 202-472-1650

Director, Administrative Services Division, General Services Administration (WBR), Seventh and D Streets, SW, Washington, DC 20407

§ 105-64.302 Fees.**§ 105-64.302-1 Records available at a fee.**

The manager shall provide one copy of a record to a requester for the fee stated in § 105-64.302-6.

§ 105-64.302-2 Additional copies.

A reasonable number of additional copies shall be provided for a fee if a requester cannot get copies made commercially.

§ 105-64.302-3 Waiver of fee.

The manager should make a copy of a record of up to 50 pages at no charge to a requester who is a GSA employee. The manager may waive the fee if the cost of collecting it is nearly as large as or greater than the fee, or if furnishing the record without charge is customary or in the public interest.

§ 105-64.302-4 Prepayment of fees over \$25.

If a fee is likely to exceed \$25, the manager notifies the person to pay the fee before GSA can make the records available. GSA will remit any overpayment or will send the requester a bill for any change over the amount paid.

§ 105-64.302-5 Form of payment.

Copies must be paid for by check or money order made out to the General Services Administration and addressed to the system manager.

§ 105-64.302-6 Reproduction fee schedule.

(a) The fee for copying a GSA record (by electrostatic copier) of 8 by 14 inches or less is 10 cents a page.

(b) The fee for copying a GSA record more than 8 by 14 inches or one that does not permit copying by routine procedures is the same as that charged commercially.

Subpart 105-64.4—Requests To Amend Records**§ 105-64.401 Submission of requests to amend records.**

A person who wants to amend a record containing personal information should send a written request to the GSA Privacy Act Officer. A GSA employee who wants to amend personnel records should send a written request to the General Services Administration, Director of Personnel (EP), Washington, DC 20405. It should show evidence of and justify the need to amend the record. Both the letter and the envelope should be marked "Privacy Act—Request to Amend Record".

§ 105-64.402 Review of requests to amend records.

(a) Managers must acknowledge a request to amend a record within 10 workdays after receiving it. If possible, the acknowledgment should state whether the request will be granted or denied, under § 105-64.404.

(b) In reviewing a record in response to a request to amend, the manager should weigh the accuracy, relevance, timeliness, and completeness of the existing record compared to the proposed amendment to decide whether the amendment is justified. On a request to delete information, the manager should also review the request and the existing record to decide whether the information is needed by the agency under a statute or an Executive order.

§ 105-64.403 Approval of requests to amend.

If a manager decides that a record should be amended, he or she must promptly correct it and send the person a corrected copy. If an accounting of disclosure was created to document disclosure of a record, anyone who previously received the record must be informed of the substance of the correction and sent a copy of the corrected record. The manager should advise the Privacy Act Officer that the request to amend was approved.

§ 105-64.404 Denial of requests to amend.

(a) If a manager decides that amending a record is improper or that it should be amended in a different way, he or she refers the request and recommendation to the Head of the Service or Staff Office or Regional Administrator through channels.

(b) If the Head of the Service or Staff Office or Regional Administrator decides to amend the record as requested, he or she should promptly return the request to the manager with instructions to make the amendment under § 105-64.403.

(c) If the Head of the Service or Staff Office or Regional Administrator decides not to amend the record as requested, he or she should promptly advise the requester in writing of the decision. The letter shall (1) state the reason for denying the request; (2) include proposed alternate amendments, if appropriate; (3) state the requester's right to appeal the denial; and (4) tell how to proceed with an appeal.

(d) The Privacy Act Officer must be sent a copy of the original denial of a request to amend a record.

§ 105-64.405 Agreement to alternative amendments.

If the letter denying a request to amend a record proposes alternate amendments and the requester agrees to them, he or she must notify the official who signed the letter. The official should promptly instruct the manager to amend the record under § 105-64.403.

§ 105-64.406 Appeal of denial of request to amend a record.

(a) A requester who is denied a request to amend a record may appeal the denial. The appeal should be sent to the General Services Administration, Privacy Act Officer (ATRAI), Washington, DC 20405. If the request involves a record in a GSA employee's official personnel folder, as described in Chapter 293 of the Federal Personnel Manual, the appeal should be addressed to the Director, Bureau of Manpower Information Systems, Office of Personnel Management, Washington, DC 20415.

(b) The appeal to the Privacy Act Officer must be in writing and be received within 30 calendar days after the requester receives the letter stating the request was denied. It should be marked "Privacy Act—Appeal," both on the front of the letter and the envelope.

(c) On receiving an appeal, the Privacy Act Officer should consult with the manager, the official who made the denial, legal counsel, and other officials involved. If the Privacy Act Officer, after consulting with these officials, decides that the record should be amended as requested, he or she must promptly inform the manager to amend it under § 105-64.403 and shall notify the requester.

(d) If the Privacy Act Officer, after consulting with the officials listed in the above paragraph, decides to reject an appeal, he or she should send the file, with a recommendation, to the Deputy Administrator for a final administrative decision.

(e) If the Deputy Administrator decides to change the record, he or she should promptly instruct the manager in

writing to amend it under § 105-64.403 and send a copy of the instruction to the Privacy Act Officer, who shall notify the requester.

(f) If the Deputy Administrator rejects an appeal, he or she should promptly notify the requester in writing. This is the final administrative decision on the request and should include:

- (1) Why the appeal is rejected;
- (2) Alternate amendments that the requester may accept under § 105-64.405;
- (3) Notice of the requester's right to file a Statement of Disagreement that must be distributed under § 105-64.407; and
- (4) Notice of requester's right to seek court review of the final administrative decision under § 105-64.408.

(g) The final agency decision must be made within 30 workdays from the date the Privacy Act Officer receives the appeal. In unusual circumstances, the Deputy Administrator may extend this time limit by notifying the requester in writing before the 30 days are up. The notice should explain why the limit was extended.

§ 105-64.407 Statements of disagreement.

On receiving a final decision not to amend a record, the requester may file a Statement of Disagreement with the manager. The statement should explain why the requester believes the record to be inaccurate, irrelevant, untimely, or incomplete. The manager must file the statement with the records and include a copy of it in any disclosure of the record. The manager must also provide a copy of the Statement of Disagreement to any person or agency to whom the record has been disclosed if the disclosure was made under the accounting requirement of § 105-64.202.

§ 105-64.408 Judicial review.

For up to 2 years after the final administrative decision under § 105-64.301-4 or § 105-64.406, a requester may seek to have the court overturn the decision. A civil action must be filed in the Federal District Court where the requester lives or has his or her principal place of business, where the agency records are maintained, or in the District of Columbia.

Subpart 105-64.5—Reporting New Systems and Altering Existing Systems**§ 105-64.501 Reporting requirement.**

(a) At least 90 calendar days before establishing a new system of records, the manager must notify the Associate Administrator for Policy and

Management Systems. The notification must describe and justify each system of records. If the Associate Administrator decides to establish the system, he or she should submit a proposal, at least 60 days before establishing the system, to the President of the Senate, the Speaker of the House of Representatives and the Director of the Office of Management and Budget for evaluating the effect on the privacy and other rights of individuals.

(b) At least 90 calendar days before altering a system of records, the responsible manager must notify the Associate Administrator for Policy and Management Systems. The notification must describe and justify altering the system of records. If the Associate Administrator decides to alter the system, he or she should submit a proposal, at least 60 calendar days before altering the system, to the President of the Senate, the Speaker of the House of Representatives, and the Director of the Office of Management and Budget for evaluating the effect on the privacy and other rights of individuals.

(c) Reports required by this regulation are exempt from reports control.

§ 105-64.502 Federal Register notice of establishment of new system or alteration of existing system.

The Associate Administrator for Policy and Management Systems must publish in the *Federal Register* a notice of intent to establish or alter a system of records:

(a) If he or she receives notice that the Senate, the House of Representatives, and the Office of Management and Budget (OMB) do not object to establishing or altering a system of records, or

(b) If 30 calendar days after submitting the proposal neither OMB nor the Congress objects.

§ 105-64.503 Effective date of new systems of records or alteration of an existing system of records.

When there is no objection to establishing or changing a system of records, it becomes effective 30 calendar days after the notice is published in the *Federal Register*.

Subpart 105-64.6—Exemptions

§ 105-64.601 General exemptions.

The following systems of records are exempt from the Privacy Act of 1974, except subsections (b); (c) (1) and (2); (e)(4) (A) through (F); (e) (6), (7), (9), (10), and (11); and (i) of the Act:

(a) Incident Reporting System, GSA/PBS-3.

(b) Investigation Case Files, ADM-24.

The systems of records GSA/PBS-3 and GSA/ADM-24 are exempt to the extent that information in them relates to enforcing the law, including police efforts to prevent, control, or reduce crime or to apprehend criminals; to the activities of prosecutors, courts, and correctional, probation, pardon, or parole authorities; and to (1) information compiled to identify criminal offenders and alleged offenders, consisting of records of arrests, disposition of criminal charges, sentencing, confinement, release, parole, and probation; (2) information compiled for a criminal investigation, including reports of informants and investigators that identify a person; or (3) reports that identify a person and were prepared while enforcing criminal laws, from arrest or indictment through release from parole. The law exempts these systems to maintain the effectiveness and integrity of the Federal Protective Service and the Office of Inspector General.

§ 105-64.602 Specific exemptions.

The following systems of records are exempt from subsections (c)(3); (d); (e)(1); (e)(4) (G), (H), and (I); and (f) of the Privacy Act of 1974:

(a) Incident Reporting System, GSA/PBS-3.

(b) Investigation Case Files, GSA/ADM-24.

(c) Security Files, HSA/HRO-37.

The systems are exempt (1) if they contain investigatory material compiled for law enforcement. However, if anyone is denied a right, privilege, or benefit for which they would otherwise be eligible because of the material, it should be provided to the person, except if it discloses the identity of a Government source of information which there is an express promise of confidentiality or before the effective date of this section, under an implied promise of confidentiality and (2) investigatory material compiled solely to decide suitability, eligibility, or qualification for Federal employment, military service, Federal contracts, or access to classified information, when disclosing the material would reveal the identity of a confidential Government informant, or prior to the effective date of this section, under an implied promise that their identity is to be held in confidence. The systems are exempted to maintain the effectiveness and integrity of investigations conducted as part of the Federal Protective Service, Office of Inspector General, and Office of Internal Security law enforcement duties or their responsibilities in the areas of Federal employment,

Government contracts, and access to security classified information.

Subpart 105-64.7—Assistance and Referrals

§ 105-64.701 Requests for assistance and referral.

Requests for assistance and referral to a system manager or other GSA employee charged with implementing these regulations are made to the GSA Privacy Officer (ATRAI), General Services Administration, Washington, DC 20405.

Dated: July 29, 1985.

Paul K. Trause,

Acting Administrator of General Services.

[FR Doc. 85-25325 Filed 10-23-85; 8:45 am]

BILLING CODE 6820-81-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 22

Hansen's Disease Duty by Civil Service Officers and Employees of the Public Health Service

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Final Rule with Comment Period.

SUMMARY: This rule amends the existing regulation at 42 CFR 22.1, which provides for special pay of 25 percent of base compensation for civil service officers and employees required to serve in a station of the Public Health Service which is devoted to the care of patients afflicted with Hansen's disease (leprosy). The rule eliminates this special pay effective January 5, 1986, for persons newly employed at or assigned to the National Hansen's Disease Center in Carville, Louisiana on or after that date. However, civil service officers and employees receiving such pay immediately before that effective date will generally continue to receive the level of pay which they received immediately before that date, as long as they continue, without interruption, to be assigned to such duty. The only exception to this procedure is that an employee's total pay will no longer be allowed to exceed general statutory limits, currently \$68,700 (5 U.S.C. 5308). Future pay raises (i.e. permanent changes in base pay) for "grandfathered" employees will be offset against their continuing special pay until the special pay of these employees is reduced to \$1,320 on an

annual basis. The rule provides a delayed effective date allowing time for meeting the agency's legal/contractual obligations to the exclusive representative of the bargaining unit.

The elimination of the special pay for civil service personnel is consistent with the elimination of such special pay for Commissioned Officers who were appointed to Hansen's disease duty on or after October 19, 1984, as specified under Pub. L. 98-525, and this rule will eventually result in the same dollar amount of Hansen's disease special pay for both Commissioned Officers and civil service employees after the phase-in period described in the rule.

EFFECTIVE DATE: The rule set forth below is effective on January 5, 1986. We are inviting written comments on this rule. Comments should be submitted no later than November 25, 1985. We will consider all comments received by that date. If, as a result of these public comments, we conclude that changes in this final regulation are needed, we will respond to the comments and include the changes in a future Federal Register publication.

ADDRESS: Send comments to: Ms. Rhoda Abrams, Director, Office of Program Development, Bureau of Health Care Delivery and Assistance, Health Resources and Services Administration, Room 7A-27, 5600 Fishers Lane, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: Ms. Rhoda Abrams, (301) 443-2853.

SUPPLEMENTARY INFORMATION: Section 208(e) of the Public Health Service Act (42 U.S.C. 210(e)) authorizes additional pay to non-commissioned officers and civilian employees of the Public Health Service (PHS) whose duties are found by the Surgeon General to require intimate contact with persons who have leprosy. (Since there are no non-commissioned officers of the PHS, this rule currently applies only to civil service officers and employees.) The statute authorizes additional pay of not more than one-half the pay or compensation for which these persons are otherwise entitled. Under the current regulation, employees assigned to leprosy duty at the National Hansen's Disease Center at Carville, Louisiana receive additional pay equaling 25 percent of their base compensation.

As will be explained more fully below, this rule modifies the current rule by eliminating any special pay for new civilian employees hired by or assigned to Carville on or after January 5, 1986, and by providing that the pay of civilian employees performing such duty before that date will be frozen at the amount of

pay including special pay, they were receiving immediately before that date as long as they continue, without a break, to perform such duty. The special pay of these "grandfathered" employees will be phased down to an amount of \$1,320 per year over several years as base pay increases. This regulation would never cause a decrease in the total dollar amount of any "grandfathered" employee's pay (except for employees whose pay exceeds the normal Executive Schedule Level V pay cap by virtue of this special pay, as explained below). Any increase in the base pay of these "grandfathered" employees will be offset (subtracted) against their special pay until their special pay is equal to an annual amount of \$1,320, which is the same amount paid to Commissioned Officers "grandfathered" in under the recent amendments made by Pub. L. 98-525. (See discussion below of section 624 of Pub. L. 98-525.)

The only exception to the above statement is that no employee will receive, for any pay period, aggregate pay (comprising basic pay, special pay under this regulation, and premiums for overtime, nightwork, irregular duty, standby status, and Sunday or holiday work) that will by reason of this special pay, exceed the biweekly rate corresponding to the statutory limit (5 U.S.C. 5308) on basic pay, which is the rate of basic pay for Level V of the Executive Schedule, currently \$68,700 per year. If this limitation causes the special pay of a "grandfathered" employee to decrease below \$1,320 per year, nothing in the regulation prevents the special pay from rising, as high as \$1,320 per year, if the statutory limit later increases.

The Department has used its authority in the past to allow civil service employees to receive Hansen's disease special pay in excess of the statutory limit. In view of the inappropriateness of the special pay, this exception to the statutory pay limit is no longer justifiable or appropriate.

Section 208(e) permits, but does not require, that such special compensation be paid. Section 208(e) provides as follows:

"Whenever any noncommissioned officer or other employee of the Service is assigned for duty which the Surgeon General finds requires intimate contact with persons afflicted with leprosy, he may be entitled to receive, as provided by regulations of the President, in addition to any pay or compensation to which he may otherwise be entitled, not more than one-half of such pay or compensation."

Although the statute speaks of

"regulations of the President," the President delegated this rulemaking authority to this Department. See Executive Order No. 11140, section 1(f), 3 CFR Part 177 (1964-1965 Comp.), reprinted in 42 U.S.C. 202 app. The Department has the authority to amend the current regulation to eliminate the special pay because the statute does not require that such compensation be paid.

Civilian employees of the Public Health Service have been receiving a pay differential since 1921, when the Federal Government assumed responsibility for the National Hansen's Disease Center at Carville, Louisiana. However, medical science has progressed rapidly in the last few decades in the understanding and treatment of Hansen's disease patients. Intensive research into the etiology and treatment of the disease has demonstrated that it is not highly communicable as a clinically active disease. Research has shown that, contrary to original belief, there is an extremely low chance of contracting an active case of Hansen's disease from contact with Hansen's disease patients due in large part to the natural immunity to the disease which is present in a great majority of persons. In the 64 years since the Public Health Service assumed responsibility for the Hansen's disease center at Carville there are only a few cases on record of employees believed to have possibly contracted Hansen's disease as a result of such employment. In each of the three suspected cases, a tuberculoid (mild) form of the disease occurred. In such cases the patient develops a benign localized lesion which heals spontaneously or heals rapidly with treatment.

Although a definitive cure has not been found, from a scientific standpoint, the fears, ostracism and stigma which have been associated with Hansen's disease since biblical times are no longer warranted. The incentive or hazardous occupation pay is considered to be one of the last remaining vestiges of the age-old fear surrounding the disease. Continuing the Hansen's disease pay only perpetuates this unwarranted fear. Experts on Hansen's disease attest to the minimal hazard involved in working with Hansen's disease patients.

Under this rule, civil service employees will be treated similarly to members of the PHS Commissioned Corps for purposes of incentive pay for Hansen's disease duty. Under 37 U.S.C. 301(a)(5), until it was repealed by the recently enacted Pub. L. 98-525, all members of the uniformed services (including PHS Commissioned Officers)

performing such duties received a monthly incentive bonus of \$110 regardless of the amount of their base compensation. Section 624 of Pub. L. 98-525 repealed that provision, but, under the transitional provisions of that section, Commissioned Officers who were assigned to such duties and were receiving such pay immediately prior to the repeal will continue to receive the \$110 per month without diminution as long as that assignment continues. The amendment of this rule eliminates this unnecessary special pay for newly hired or newly assigned civil service employees in a similar manner as the statutory repeal eliminates the pay for newly hired or assigned Commissioned Officers, and it provides that civil service employees assigned to this duty immediately before the effective date will eventually receive (after the phase-in period contained in the rule) special pay at a rate equivalent to the rate for Commissioned Officers.

In addition, the Department is changing the terminology in the regulation from "leprosy" to "Hansen's disease." The term "leprosy" is no longer the accepted medical term for this disease and the term is offensive to sufferers of this disease.

Information Collection Requirements

This rule does not require any information collection activities and, therefore, no approvals are necessary under the Paperwork Reduction Act of 1980.

Regulatory Flexibility Act and Executive Order 12291

This rule is an internal personnel matter which affects only Department employees. Therefore, neither a Regulatory Flexibility Analysis under the Regulatory Flexibility Act, Pub. L. 96-354, nor an impact analysis under Executive Order 12291 is required, because such internal matters are exempted from such review.

Therefore, under the authority vested in the President of the United States by 42 U.S.C. 210(e) and delegated by him to the Secretary of Health and Human Services (Executive Order 11140, Section 1(f), 3 CFR Part 177 (1964-1965 Comp.), reprinted in 42 U.S.C. 202 app.) Part 22 of title 42, Code of Federal Regulations is amended as set forth below.

List of Subjects in 42 CFR Part 22

Direct care programs, Health professions, Leprosy (Hansen's disease) wages, Special pay, Government employees.

Dated: August 29, 1985.

James F. Dickson,

Acting Assistant Secretary for Health.

Approved: October 7, 1985.

Margaret M. Heckler,

Secretary.

PART 22—PERSONNEL OTHER THAN COMMISSIONED OFFICERS

1. The authority section is revised to read as follows:

Authority: Section 208(e) of the Public Health Service Act, 42 U.S.C. 210(e); E.O. 11140, 29 FR 1637.

2. The reference to § 22.1 in the Table of Sections for Part 22 of Title 42, Code of Federal Regulations, is revised to read as follows:

Hansen's Disease Duty by Personnel Other Than Commissioned Officers

Sec.

22.1 Duty at a station of the Service devoted to the care of Hansen's disease patients; additional pay.

3. Section 22.1 of Title 42, Code of Federal Regulations, is revised to read as follows:

§ 22.1 Duty at a station of the Service devoted to the care of Hansen's disease patients; additional pay.

(a) Non-commissioned officers and other employees of the Service shall not receive any additional compensation by reason of being assigned to any duty requiring intimate contact with persons with Hansen's disease. However, any such officer or employee who was entitled, on January 4, 1986, to receive additional pay by reason of being assigned to full-time duty, for a period of 30 days or more, at a station of the Service devoted to the care of Hansen's disease patients and who continues to be assigned to such duty, shall receive special pay as long as such assignment continues without a break.

(b) Such special pay shall, on any future date, be at an annual dollar level equal to the lower of the levels that would be paid under the following subparagraphs:

(1) 25% of the lowest level of basic pay that he or she has been receiving on any date from January 4, 1986, through that future date;

(2) The amount by which the level of an employee's basic pay plus special pay on January 4, 1986, exceeds the level of that employee's basic pay on that future date, except that the special pay under this subparagraph shall not be less than 12 times the monthly special pay then paid to Commissioned Officers entitled to special pay for duty involving

intimate contact with persons who have Hansen's disease. (As of October 24, 1985, that monthly rate was \$110.)

(c) An officer or employee may be paid special pay for any pay period, under paragraphs (a) and (b) of this section, only to the extent that it does not cause his or her aggregate pay for that pay period to exceed the biweekly rate of basic pay for Level V of the Executive Schedule. As used in this paragraph, "aggregate pay" comprises basic pay, this special pay, and premiums for overtime, nightwork, irregular duty, standby status, and Sunday or holiday work.

[FR Doc. 85-25281 Filed 10-23-85; 8:45 am]

BILLING CODE 4160-18-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations; Alabama et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are determined for the communities listed below.

The base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base (100-year) flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: John L. Matticks Acting Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the Federal Register for each community listed.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR Part 67. An opportunity for the community or individuals to appeal proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for floods plain management in flood-prone areas in accordance with 44 CFR Part 60.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been prepared. It does not involve any collection of information for purposes of the Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood Insurance, Flood plains.

PART 67—[AMENDED]

The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

The base (100-year) flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. No appeal was made during the 90-day period and the proposed base flood elevations have not been changed.

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
ALABAMA	
Citronelle (City), Mobile County (FEMA Docket No. 6665)	
West Fork Puppy Creek:	
About 0.52 mile downstream of Russell Road	*185
About 1.05 miles upstream of Russell Road	*225
Reaver Pond Branch:	
About 0.17 mile downstream of confluence of Sandy Fork	*180
About 1.95 miles upstream of confluence of Sandy Fork	*226
Bennett Creek:	
About 1.72 miles downstream of U.S. Highway 45	*169

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
About 0.16 mile upstream of U.S. Highway 45	*189
Little Creek:	
At corporate limits (about river mile 5.48)	*162
About 0.12 mile upstream of corporate limits (about river mile 5.60)	*165
Puppy Creek:	
About 0.09 mile downstream of downstream corporate limits (about river mile 12.81)	*215
At upstream corporate limits (about river mile 14.10)	*240
Cedar Creek:	
About 0.245 miles downstream of downstream corporate limits (about river mile 18.775)	*139
About 0.18 mile upstream of upstream corporate limits (about river mile 20.00)	*165
Maps available for inspection at City Hall, Citronelle, Alabama.	
Creola (Town), Mobile County (FEMA Docket No. 6665)	
Mobile Bay: From downstream corporate limits to just downstream of Interstate 65 bridge over Mobile River	*11
Seymore Branch:	
At confluence with Gunnison Creek	*16
About 2700 feet upstream of confluence of Seymore Branch Tributary	*23
Seymore Branch Tributary:	
At confluence with Seymore Branch	*19
About 1550 feet upstream of confluence with Seymore Branch	*22
Mobile River:	
Just downstream of Interstate 65	*11
About 1850 feet upstream of Interstate 65	*12
Jim Bell Branch:	
About 100 feet downstream of Interstate 65	*11
Just downstream of Creola-Axis Loop Road	*13
About 250 feet upstream of Creola-Axis Loop Road	*18
About 650 feet upstream of confluence of unnamed tributary	*19
Hells Branch:	
At mouth	*11
Just downstream of Burlington Northern Railroad	*14
Gunnison Creek:	
About 1.6 miles downstream of confluence Harpers Branch	*11
Just downstream of Burlington Northern Railroad	*18
Harpers Branch:	
At confluence with Gunnison Creek	*11
About 130 feet downstream of Jackson Street	*11
Just upstream of Lister Dairy Road	*19
At confluence of Cypress Pond Branch	*22
Cypress Pond Branch:	
At confluence with Harpers Branch	*22
About 1320 feet upstream of Creola-Axis Road	*23
Maps available for inspection at City Hall, Creola, Alabama.	
Unincorporated Areas of Elmore County (FEMA Docket No. 6648)	
Alabama River:	
About 6.0 miles downstream of Interstate 65	*162
At confluence of Coosa River	*168
Coosa River:	
At confluence with Alabama River	*168
About 2.0 miles upstream of confluence of Yellow Water Creek	*189
Tallapoosa River:	
At confluence with Coosa River	*168
About 5.3 miles upstream of confluence of Chubbahatchee Creek	*165
Coosada Creek:	
About 0.32 mile upstream of Louisville and Nashville railroad	*168
About 1.27 miles upstream of Airport Road	*216
Cottonford Creek:	
Just upstream of State Highway 14	*169
About 2.27 miles upstream of County Highway 3	*281

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Grandview Branch:	
At mouth	*226
About 1.31 miles upstream of mouth	*304
Morter Creek:	
At mouth	*168
Just upstream of State Highway 14	*189
Gravel Pit Creek:	
At mouth	*169
About 1.31 miles upstream of mouth	*219
Graveyard Creek:	
About 0.44 mile downstream of East Patton Street	*312
About 1.99 miles upstream of East Patton Street	*414
Jackson Lake Tributary: Within county	*167
Still Creek:	
At mouth	*164
About 0.76 mile upstream of Grandview Road	*258
Lewis Creek:	
About 0.79 mile upstream of mouth	*234
About 3.31 miles upstream of mouth	*349
Mill Creek:	
At mouth	*164
About 0.88 mile upstream of Old State Highway 14	*285
Maps available for inspection at the Elmore County Courthouse, Wetumpka, Alabama.	
Satsuma (City), Mobile County (FEMA Docket No. 6665)	
Gunnison Creek: Within community	*11
Sweet Gum Creek: Within community	*11
Steele Creek:	
At mouth	*41
Just downstream of Burlington Northern Railroad	*11
About 2350 feet upstream of Burlington Northern Railroad	*18
Hells Swamp Branch:	
About 650 feet downstream of corporate limits	*20
At upstream corporate limits	*26
Mobile Bay/Mobile River: Along Spat Creek downstream of Catherine Drive	*11
Maps available for inspection at City Hall, Satsuma, Alabama.	
Seima (City), Dallas County, (FEMA Docket No. 6648)	
Alabama River:	
About 4.0 miles downstream of U.S. Highway 80	*117
About 0.75 mile upstream of Louisville and Nashville Railroad	*122
Beach Creek: Within community	*121
Jones Creek:	
At confluence with Valley Creek	*116
About 3,100 feet upstream of Chambliss Drive	*128
Valley Creek:	
At confluence with Alabama River	*118
About 2.1 miles upstream of Highland Avenue	*129
Maps available for inspection at City Hall, 222 Broad Street, Seima, Alabama.	
Wetumpka (City), Elmore County (FEMA Docket No. 6658)	
Coosa River:	
About 1.5 miles downstream of West Bridge Street	*172
About 3.2 miles upstream of West Bridge Street	*180
Maps available for inspection at the City Hall, Wetumpka, Alabama.	
CALIFORNIA	
Agoura Hills (City), Los Angeles County (FEMA Docket No. 6648)	
Lindero Canyon (above Medea Creek): 50 feet upstream from the center of Kanan Road	*822
Lindero Canyon (above Lake Lindero): 315 feet upstream from the center of Thousand Oaks Boulevard	*970
Medea Creek (above Mulholland Highway): Intersection of the stream and the center of Side-way Road	*834

PROPOSED BASE (100-YEAR) FLOOD
ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
<i>Modena Creek (above Ventura Freeway):</i> 550 feet upstream from the center of Canwood Street	*853
<i>Chesboro Creek:</i> 40 feet upstream from the center of Driver Avenue	*907
<i>Palo Colorado Creek:</i> 280 feet upstream from the center of Balkins Drive	*967
Maps available for inspection at the Planning Department, 30313 Canwood, Unit 25, Agoura Hills, California	
COLORADO	
Carbondale (Town), Garfield County (FEMA Docket No. 6648)	
<i>Crystal River:</i> 450 feet west from the intersection of Greyton Drive and Crystal Road	*6,142
Maps available for inspection at Planning Department, 76 South 2nd Street, Carbondale, Colorado	
Garfield County (Unincorporated Areas) (FEMA Docket No. 6648)	
<i>Colorado River (At Rifle):</i> 750 feet upstream from the center of State Highway 13	*5,304
<i>Colorado River (At New Castle):</i> 1,080 feet upstream from the confluence with Alkali Creek	*5,526
<i>Colorado River (At Glenwood Springs):</i> 80 feet upstream from the center of Access Road M	*5,721
<i>Roaring Fork River:</i> 630 feet upstream from the confluence with Threemile Creek	*5,793
40 feet upstream from the center of County Road 109	*5,903
80 feet upstream from the center of County Road 100	*6,270
<i>Crystal River:</i> At the center of the Freeman S. James Bridge	*6,103
100 feet upstream from the center of Mt. Sopris Ranch Road	*6,227
<i>Cattle Creek:</i> 10 feet upstream from the center of the Denver and Rio Grande Western Railroad	*6,007
<i>Fourmile Creek:</i> 70 feet upstream from the center of Fourmile Road	*6,088
<i>Threemile Creek:</i> 80 feet upstream from the center of Midland Avenue	*5,881
<i>Mitchell Creek:</i> 40 feet upstream from the center of U.S. Highway 6	*5,704
<i>Rifle Creek:</i> At the center of County Road 291	*5,468
320 feet upstream from the center of County Road 251	*5,626
<i>Rifle Creek Splitflow:</i> 30 feet upstream from the center of County Road 281	*5,462
<i>Hubbard Gulch:</i> 40 feet upstream from the center of State Highway 13 Bypass	*5,440
<i>Government Creek:</i> 330 feet southwest from the intersection of County Road 242 and State Highway 13	*5,544
<i>Helmer Gulch:</i> 100 feet south of the center of the east bound lane of Interstate Highway 70, approximately 4,000 feet west of its intersection with State Highway 13	#1
<i>Ramsey Gulch:</i> 100 feet south of the center of the eastbound lane of Interstate Highway 70, approximately 2,000 feet east of its intersection with State Highway 13	#1
<i>Alkali Creek:</i> 40 feet upstream from the center of County Road 335	*5,583
Maps available for inspection at the Planning Department, 109 8th Street, Glenwood Springs, Colorado	
Palisade (Town), Mesa County (FEMA Docket No. 6658)	
<i>Colorado River:</i> 100 feet upstream from the center of U.S. Highway 6	*4,698
Maps available for inspection at Town Manager's Office, 175 East 3rd, Palisade, Colorado	

PROPOSED BASE (100-YEAR) FLOOD
ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Rifle (City), Garfield County (FEMA Docket No. 6645)	
<i>Colorado River:</i> 90 feet upstream from the center of State Highway 13	*5,303
<i>Helmer Gulch:</i> 90 feet south from the center of the eastbound lane of Interstate Highway 70 approximately 3,600 feet west of its intersection with State Highway 13	#1
<i>Ramsey Gulch:</i> 90 feet south from the center of the eastbound lane of Interstate Highway 70 approximately 1,900 feet east of its intersection with State Highway 13	#1
<i>Rifle Creek:</i> Intersection of stream and the center of 3rd street	*5,414
20 feet northeast along Acacia Avenue from the intersection of 26th Street and Acacia Avenue	*5,316
<i>Rifle Creek Splitflow:</i> 20 feet upstream from the center of 30th Street	*5,448
<i>Hubbard Gulch:</i> 30 feet upstream from the center of 12th Street	*5,372
<i>Government Creek:</i> 120 feet upstream from the center of Highway 13	*5,411
Maps available for inspection at the Engineer and Planning Office, 202 Railroad Avenue, Rifle, Colorado	
CONNECTICUT	
Essex (Town), Middlesex County (FEMA Docket No. 6649)	
<i>Falls River:</i> Upstream side of Falls River Pond Dam	*14
Approximately 150 feet upstream of Connecticut Valley Railroad	*25
Approximately 100 feet upstream of Farm Estate Road	*44
Shoreline of Wrights Pond at upstream corporate limits	*131
Maps available for inspection at the Town Clerk's Vault, Town Hall, Essex, Connecticut	
Westbrook (Town), Middlesex County (FEMA Docket No. 6649)	
<i>Long Island Sound:</i> Shoreline at Grove Beach Point	*15
Shoreline at Gerard Avenue (extended)	*14
Shoreline of western corporate limits	*15
Palchogue River at CONRAIL bridge	*10
<i>Menunketesuck River:</i> Menunketesuck River at Old Clinton Road and corporate limit	*7
Upstream side of Old Clinton Road	*12
<i>Falls River:</i> At downstream corporate limits	*104
Upstream side of Wright's Pond Dam	*131
Downstream side of Messerschmidt Pond Dam	*165
Maps available for inspection at the clerk's Vault, Town Hall, Westbrook, Connecticut	
FLORIDA	
Beverly Beach (Town), Flagler County (FEMA Docket No. 6658)	
<i>Atlantic Ocean:</i> About 100 feet landward of shoreline	*9
Along shoreline	*13
<i>Intracoastal Waterway:</i> At southern corporate limits	*5
At northern corporate limits	*6
Maps available for inspection at the Recreation Building, Beverly Beach Mobile Home Park, Beverly Beach, Florida	
Flagler County (Unincorporated Areas) (FEMA Docket No. 6658)	
<i>Atlantic Ocean:</i> About 150 feet west of shoreline from southern to northern county boundary	*9

PROPOSED BASE (100-YEAR) FLOOD
ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Along shoreline from southern to northern county boundary	*13
<i>Intracoastal Waterway:</i> Along shoreline from southern county boundary to about 4,700 feet north	*4
Along shoreline from about 4,800 feet north of confluence of St. Joe Canal to the northern county boundary	*7
<i>Middle Haw Creek:</i> Just upstream of State Road 11	*13
About 1.55 miles upstream of confluence of Middle Haw Creek Tributary No. 2	*29
<i>Middle Haw Creek Tributary No. 1:</i> At confluence with Middle Haw Creek	*16
Just downstream of State Road 11	*16
<i>Middle Haw Creek Tributary No. 2:</i> At confluence with Middle Haw Creek	*26
Just upstream of Hudson Road No. 2	*31
<i>Sixteenmile Creek:</i> At county boundary	*14
About 1.44 miles upstream of county boundary	*14
<i>Bulow Creek:</i> At county boundary	*6
Just downstream of Old Kings Road	*18
<i>Bulow Creek Tributary:</i> At confluence with Bulow Creek	*12
About 4,750 feet upstream of confluence with Bulow Creek	*20
<i>Sweetwater Branch:</i> Just upstream of State Road 304	*17
About 1 mile upstream of Hudson No. 12	*27
<i>Black Branch:</i> About 900 feet upstream of confluence with Haw Creek	*10
About 4,500 feet upstream of Old Haw Creek Road	*17
<i>Graham Swamp:</i> At confluence with Bulow Creek	*8
About 2,200 feet upstream of State Road 100	*13
Maps available for inspection at the County Engineer's Office, Courthouse Annex, P.O. Box 936, Bunnell, Florida	
Marineland (Town), Flagler County (FEMA Docket No. 6655)	
<i>Atlantic Ocean:</i> Along shoreline	*13
<i>Intracoastal Waterway:</i> Along Shoreline	*7
Maps available for inspection at the Administrative Office Building, Marineland, Florida	
IDAHO	
Lemhi County (Unincorporated Areas) (FEMA Docket No. 6658)	
<i>Lemhi River:</i> 90 feet upstream from center of Lemhi Street	*3,967
<i>Salmon River:</i> 200 feet upstream from center of U.S. Route 93 bridge at Carmen	*3,867
Maps available for inspection at County Clerk's Office, 206 Courthouse Drive, Salmon, Idaho	
Lincoln County (Unincorporated Areas) (FEMA Docket No. 6645)	
<i>Little Wood River (At Shoshone):</i> 50 feet downstream from the center of North Grape Street	*3,961
<i>Little Wood River (At Richfield):</i> 300 feet downstream from center of Dietrich Main Canal diversion dam	*4,274
Maps available for inspection at Lincoln County Courthouse, Shoshone, Idaho	
ILLINOIS	
Unincorporated Areas of Alexander County (FEMA Docket No. 6658)	
<i>Mississippi River:</i> About 7.0 miles upstream of mouth of Ohio River	*34
About 6.4 miles upstream of State Route 146	*361
<i>Ohio River:</i>	

PROPOSED BASE (100-YEAR) FLOOD
ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
About 0.2 mile upstream of Illinois Central Gulf Railroad	*330
About 3.1 miles upstream of Illinois Central Gulf Railroad	*331
Pigeon Creek:	
At mouth	*340
About 1.83 miles upstream of State Route 3	*358
Maps available for inspection at the Supervisor of Assessments Office, Alexander County Courthouse, Cairo, Illinois.	
Fulton County (Unincorporated Areas) (FEMA Docket No. 6658)	
Illinois River:	
About 0.2 mile downstream of downstream county boundary	*452
At upstream county boundary	*455
Copperas Creek:	
About 0.5 mile downstream of U.S. Route 24	*455
About 0.5 mile upstream of U.S. Route 24	*457
Spain River:	
About 0.2 mile downstream of State Route 116	*522
About 0.93 mile upstream of State Route 116	*537
Tributary to Swingle Creek:	
About 1.88 miles upstream of mouth	*535
About 2.3 miles upstream of mouth	*539
Maps available for inspection at the County Planning and Zoning Department, 700 East Oak Street, Canton, Illinois.	
Henderson County (Unincorporated Areas), (FEMA Docket No. 6685)	
Mississippi River:	
At downstream county boundary	*528
At upstream county boundary	*543
Maps available for inspection at the County Clerk's Office, Henderson County Courthouse, Oquawka, Illinois.	
Kewanee (City), Henry County (FEMA Docket No. 6665)	
Prospect Street Creek:	
About 950 feet downstream of Maple Avenue	*783
About 500 feet upstream of Elm Street	*809
Mill Street Creek:	
About 1,600 feet downstream of East Street	*786
About 425 feet downstream of Acorn Street	*838
Maps available for inspection at the Clerk's Office, City Hall, 200 West Third, Kewanee, Illinois.	
Mercer County, (Unincorporated Areas) (FEMA Docket No. 6645)	
Mississippi River:	
At downstream county boundary	*542
At upstream county boundary	*555
Maps available for inspection at the County Clerk's Office, Mercer County Courthouse, Alton, Illinois.	
Unincorporated Areas of Morgan County (FEMA Docket No. 6658)	
Illinois River: Within community	*447
Mauvasterne Creek:	
Just upstream of Poor Farm Road	*558
Just downstream of Sandusky Street	*563
Just upstream of Sandusky Street	*568
About 1,800 feet upstream of Woods Lane	*597
Town Brook:	
About 500 feet upstream of Morton Avenue	*596
Just downstream of Massey Lane	*602
Tributary No. 1:	
At confluence with Mauvasterne Creek	*568
Just downstream of Harmony Drive	*607
Tributary No. 2:	
Just upstream of Woods Lane	*597
About 2,500 feet upstream of Township Road 1225	*611

PROPOSED BASE (100-YEAR) FLOOD
ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Maps available for inspection at the County Board Office, County Courthouse, Jacksonville, Illinois.	
Northlake (City), Cook County (FEMA Docket No. 6658)	
Addon Creek:	
About 1,850 feet downstream of Hirsch Avenue	*637
About 1,700 feet upstream of Chicago and North Western Railroad	*654
Maps available for inspection at the City Manager's Office, Municipal Building, 55 East Lake Street, Northlake, Illinois.	
Unincorporated Areas of Pike County (FEMA Docket No. 6658)	
Mississippi River:	
About 2.2 miles downstream of Lock and Dam No. 24	*457
About 2.4 miles upstream of Burlington Northern Railroad	*477
Illinois River:	
About 4.2 miles downstream of Illinois Central Gulf Railroad	*442
About 3,000 feet upstream of State Route 104	*447
Bay Creek:	
About 2,400 feet downstream of County Route 10	*479
About 2,400 feet upstream of County Route 10	*483
Maps available for inspection at the Zoning Administrator's Office, c/o County Clerk, Pike County Courthouse, Pittsfield, Illinois.	
Unincorporated Areas of Scott County (FEMA Docket No. 6658)	
Illinois River:	
About 2.1 miles downstream of confluence of Big Sandy Creek	*443
About 1.0 miles upstream of confluence of Coon Run	*447
Wolf Run Creek:	
About 2,800 feet downstream of Rockwood Street	*446
About 700 feet upstream of Norfolk Southern Railway	*461
Maps available for inspection at the County Commissioner's Office, Scott County Courthouse.	
Sidney (Village), Champaign County (FEMA Docket No. 6658)	
Salt Fork River: Within community	*659
Right Bank Tributary of Salt Fork River:	
At mouth	*659
About 0.22 mile upstream of Victory Street	*660
Left Branch of Right Bank Tributary of Salt Fork River: Within community	*659
Maps available for inspection at the Village Clerk's Office, Village Hall, Sidney, Illinois.	
Union County (Unincorporated Areas) (FEMA Docket No. 6668)	
Mississippi River:	
At southern county boundary	*358
About 1.95 miles upstream of confluence of Big Muddy River	*371
Maps available for inspection at the Assessor's Office, Union County Courthouse, Jonesboro, Illinois.	
INDIANA	
Unincorporated Areas of Brown County (FEMA Docket No. 6658)	
North Fork Salt Creek:	
About 1.4 miles downstream of Green Valley Road	*584
About 1.4 miles upstream of Private Road	*656
Beantown Creek:	

PROPOSED BASE (100-YEAR) FLOOD
ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
About 1300 feet downstream of confluence of Plum Creek	*632
About 200 feet upstream of Upper Beantown Road (about 1.5 miles upstream of Sprunika Road)	*754
North Fork Beantown Creek:	
At mouth	*662
Just upstream of State Route 135	*683
Crooked Creek:	
About 550 feet downstream of Crooked Creek Road (about 3.25 miles above mouth)	*566
About 1,500 feet upstream of Private Road	*627
Lower Schooner Creek:	
At mouth	*570
At confluence of Cold Well Hollow	*605
Upper Schooner Creek:	
At confluence of Cold Well Hollow	*605
About 300 feet upstream of County Road (about 2.0 miles upstream of confluence of Cold Well Hollow)	*684
Graw Bone Creek:	
At mouth	*617
About 1.24 miles upstream of Mount Liberty Road	*666
Henderson Creek:	
At confluence of Graw Bone Creek	*666
Just downstream of County Road (about 2.2 miles upstream of Mount Liberty Road)	*704
Just upstream of County Road (about 2.2 miles upstream of Mount Liberty Road)	*708
About 0.25 mile upstream of County Road (about 2.86 miles upstream of Mount Liberty Road)	779
Maps available for inspection at the Brown County Plan Commission, P.O. Box 401, Nashville, Indiana.	
Crawford County (Unincorporated Areas) (FEMA Docket No. 6658)	
Little Blue River:	
Just upstream of Old State Route 37	*487
At confluence of Bird Hollow Creek	*515
Sinking Fork Creek:	
At southern County boundary (upstream crossing)	*451
About 0.6 mile upstream of Interstate 64	*513
Potts Creek:	
At mouth	*493
About 200 feet upstream of Farm Road	*523
Otter Creek:	
At mouth	*471
Just downstream of County Route 9	*549
Tributary No. 1:	
At mouth	*511
About 3,400 feet upstream of mouth	*631
Tributary No. 2:	
At mouth	*526
About 1,200 feet upstream of mouth	*535
Red Hollow Creek:	
At confluence with Little Blue River	*515
About 0.9 mile upstream of State Route 37	*548
Brownstown Creek:	
At mouth	*515
About 1.7 miles upstream of mouth	*560
Dog Creek:	
At mouth	*527
About 1.7 miles upstream of mouth	*581
Camp Fork Creek:	
About 0.75 mile upstream of mouth	*615
About 2.0 miles upstream of mouth	*539
Blue River:	
About 1.7 miles downstream of Main Street	*542
About 1.3 miles upstream of Main Street	*554
Ohio River:	
About 2.8 miles downstream of confluence of Little Blue River	*422
About 0.9 mile upstream of confluence of Blue River	*432
Palaka Lake: Along shoreline	*561
Maps available for inspection at the Auditor's Office, Crawford County Courthouse, English, Indiana.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued		PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued		PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued	
Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
English (Town), Crawford County (FEMA Docket No. 6658)		Shallow flooding (overflow from Old Smoky Hill River Channel):		Shallow Flooding (overflow from Spring Creek):	
Little Blue River:		About 2,000 feet east of intersection of Ohio Street and Elm Street	*1,219	About 1,200 feet east of intersection of Kipp Road and Seventh Street	1,226
About 1,500 feet downstream of Norfolk Southern Railway	*502	About 350 feet south of intersection of Indian Rock Lane and Indiana Avenue	*1,225	Maps available for inspection at the City County Building, County Planning Department, 300 West Ash, Salina, Kansas.	
Just upstream of State Route 64	*515	Shallow flooding (ponding behind Smoky Hill River levee):		KENTUCKY	
Bird Hollow Creek: Within corporate limits	*515	At intersection of Beloit Avenue and Dow Avenue	*1,224	Magoffin County (Unincorporated Areas) (FEMA Docket No. 6658)	
Camp Fork Creek:	*508	About 600 feet east of intersection of Melane Lane and Scott Avenue	*1,243	Licking River:	
At mouth	*519	Shallow flooding (overflow from The Slough):		About 0.37 mile downstream of Gifford Road	*643
About 2,000 feet upstream of Beasley Road		Just upstream of Cloud Street	*1,232	About 2.86 miles upstream of State Route 1090	*673
Maps available for inspection at the Town Hall, English, Indiana.		At intersection of Fourth Street and Wayne Avenue	*1,236	State Road Fork:	
KANSAS		Shallow flooding (overflow from Magnolia Road Ditch):		About 1,200 feet downstream of 4th Street	*656
Albert (City), Barton County (FEMA Docket No. 6658)		About 1,000 feet west of intersection of Leland Way and Quincy Street	*1,236	Just downstream of Bear Branch Road	*685
Walnut Creek Right Bank Overflow:		About 900 feet north of Reed Avenue and Drake Place	*1,238	Mash Fork:	
About 0.4 miles downstream of Center Street	*1,916	Maps available for inspection at the City County Building, City Planning Department, Salina, Kansas		At mouth	*660
Just downstream of Center Street	*1,920	Saline County (Unincorporated Areas), (FEMA Docket No. 6648)		About 0.6 mile above mouth	*665
Shallow Flooding:		Smoky Hill River:		Burning Fork:	
At intersection of Eugene Street and Second Avenue	*1,915	At eastern county boundary	*1,170	About 0.27 mile downstream of Ward Road	*657
At intersection of Center Street and Second Avenue	*1,917	About 2.45 miles upstream of confluence of Solomon River	*1,173	About 0.90 mile upstream of Mountain Parkway	*664
Maps available for inspection at the City Hall, Albert, Kansas.		About 2.2 miles downstream of confluence of Saline River	*1,195	Maps available for inspection at the County Courthouse, Salyersville, Kentucky.	
Hoisington (City), Barton County (FEMA Docket No. 6658)		Just downstream of North Street Road	*1,210	Unincorporated Areas of Martin County (FEMA Docket No. 6648)	
Shop Creek:		Just upstream of North Street Road	*1,215	Calif Creek: Within county	*610
Just upstream of Missouri Pacific Railroad	*1,825	About 0.73 mile upstream of confluence of Dry Creek Division	*1,256	Calif Creek Tributary:	
Just downstream of Ninth Street	*1,833	Saline River:		At mouth	*610
Shop Creek Tributary:		At confluence with Smoky Hill River	*1,198	About 0.85	*722
At mouth	*1,826	About 3.6 miles upstream of U.S. Highway 61	*1,237	Turkey Creek:	
Just downstream of Ninth Street	*1,833	Mulberry Creek:		At mouth	*612
Shallow Flooding (Overflow from Shop Creek Tributary):		At confluence with Saline River	*1,219	At confluence of Long Fork	*655
About 250 feet upstream of Ninth Street	*1,834	Just downstream of Burma Road	*1,239	Long Fork:	
About 500 feet upstream of Fifteenth Street	*1,844	Mulberry Creek Overflow:		At confluence with Turkey Creek	*655
Maps available for inspection at the City Hall, 109 East First Street, Hoisington, Kansas.		At confluence with Saline River	*1,205	About 0.16 mile upstream of the confluence of Pigeonroost Branch	*682
Salina (City), Saline County (FEMA Docket No. 6648)		Just downstream of North Fifth Street	*1,219	Big Creek: Within county	
Saline River:		Dry Creek:		Big Elk Creek: Within county	*613
About 1,400 feet downstream of North Fifth Street	*1,219	At confluence with Mulberry Creek	*1,228	Buck Creek:	
About 2,200 feet upstream of North Ninth Street	*1,224	Just downstream of Farrelly Road	*1,247	About 1.0 mile upstream of mouth	*624
Smoky Hill River:		About 2.8 miles upstream of Schilling Road	*1,253	At confluence of Right Fork Buck Creek	*630
About 1,500 feet downstream of Missouri Pacific Railroad	*1,206	Dry Creek Division:		At confluence with Buck Creek	*630
About 9,100 feet upstream of Crawford Street	*1,238	At confluence with Smoky Hill River	*1,255	About 0.25 mile upstream of State Route 2031	*645
Mulberry Creek:		About 1,200 feet upstream of State Highway 104	*1,264	Emily Creek:	
At confluence with Saline River	*1,219	Gypsum Creek:		At mouth	*628
About 4,600 feet upstream of North Ninth Street	*1,225	About 2.0 miles downstream of Missouri Pacific Railroad	*1,226	About 0.5 mile upstream of White Oak Creek Road	*638
Dry Creek:		About 1.6 miles upstream of State Highway 4	*1,242	Wolf Creek:	
Just upstream of Union Pacific Railroad	*1,230	Solomon River:		At mouth	*628
About 3,000 feet upstream of Schilling Road	*1,245	About 0.45 mile upstream of confluence with Smoky Hill River	*1,171	About 0.70 mile upstream of confluence of Little Rockcastle Creek	*641
The Slough:		About 350 feet upstream of Field Road	*1,172	Flutlick Branch: Within county	
At confluence with Old Smoky Hill River Channel	*1,225	Magnolia Road Ditch:		Friendship Tributary: Within county	*609
Just upstream of Cloud Street	*1,232	At confluence with Dry Creek	*1,240	Tug Fork:	
Magnolia Road Ditch:		About 0.31 mile upstream of Neal Avenue	*1,243	About 1.8 miles downstream of confluence of Flutlick Branch	*607
About 1,500 feet downstream of South Ninth Street	*1,240	Shallow Flooding (overflow from Old Dry Creek Channel North):		At confluence of Big Creek	*652
About 1,600 feet upstream of Neal Avenue	*1,243	Just upstream of Euclid Avenue	*1,219	Rockhouse Fork:	
Mulberry Creek Overflow:		Just upstream of Union Pacific Railroad	*1,225	About 0.3 mile downstream of the confluence of Williamson Branch	*650
About 1,650 feet downstream of North Fifth Street	*1,217	Shallow Flooding (overflow from Old Smoky Hill River Channel):		About 0.24 mile upstream of confluence of Stafford Fork	*672
Just downstream of Euclid Avenue	*1,219	At intersection of North Street Road and Marymount Road	1,219	Middle Fork:	
About 1,150 feet upstream of West State Street	*1,225	Shallow Flooding (ponding behind Smoky Hill River levee):		About 1.0 mile downstream of Saltwell Branch Road	*634
Shallow flooding (overflow from Old Dry Creek Channel North):		About 2,000 feet west of mouth of Smoky Hill Tributary No. 2	*1,224	About 1.0 mile upstream of confluence of Saltwell Branch	*653
Just downstream of Euclid Avenue	*1,219	About 1,800 feet west of Magnolia Road bridge over Smoky Hill River	*1,234	Coldwater Fork:	
About 1,400 feet west of intersection of Broadway Blvd. and Armory Road	*1,227	About 1,300 feet north of intersection of Ohio Road and Schilling Road	*1,243	About 0.36 mile downstream of confluence of Blacklog Fork	*648
				About 0.65 mile upstream of confluence of Collins Branch	*686
				Blacklog Fork:	
				At mouth	*651
				About 2.11 miles upstream of confluence of Little Blacklog Fork	*688
				White Oak Fork:	
				At mouth	*629
				About 0.87 mile upstream of mouth	*653
				Pigeonroost Fork:	

PROPOSED BASE (100-YEAR) FLOOD
ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
At mouth.....	*635
About 1.28 miles upstream of Norfolk Southern Railway.....	*642
Maps available for inspection at the Martin County Courthouse, Inez, Kentucky.	
MAINE	
Bath (City), Sagadahoc County (FEMA Docket No. 6658)	
Kennebec River: Entire shoreline within commu- nity.....	*9
Merymeeting Bay: Entire shoreline within commu- nity.....	*9
Androscoggin River: Entire shoreline within commu- nity.....	*10
New Meadows River: Entire shoreline within commu- nity.....	*10
Maps available for inspection at the City Hall, 55 Front Street, Bath, Maine.	
Brunswick (Town), Cumberland County (FEMA Docket No. 6649)	
Casco Bay:	
Shoreline at confluence of Bunganuc Stream.....	*13
Shoreline of Maquoit Bay at Maquoit Road (extended).....	*10
East shoreline of Merepoint Neck at Windemere Road (extended).....	*11
Shoreline of Crow Island.....	*9
Shoreline of Ocean Drive (extended).....	*10
Shoreline of Harpwell Cove.....	*10
Shoreline of Lower Coombs Island.....	*9
New Meadows River:	
Shoreline at Thomas Bay.....	*9
Shoreline at Old Bath Road.....	*10
Androscoggin River:	
At downstream corporate limits.....	*10
At Bay Bridge Road (extended).....	*10
Downstream side of Main Central Railroad (downstream crossing).....	*16
Upstream side Central Maine Power Company Dam.....	*51
At Interstate 95.....	*56
Upstream side of dam located approximately 0.5 mile upstream of confluence of Simpson Brook.....	*79
At Androscoggin-Cumberland County boundary.....	*81
Maps available for inspection at the Town Man- ager's Office, Municipal Building, Brunswick, Maine.	
MICHIGAN	
Corunna (City), Shiawassee County (FEMA Docket No. 6658)	
Shiawassee River:	
About 1.4 miles downstream of State Road.....	*734
About 1.2 miles upstream of dam.....	*741
Maps available for inspection at the City Clerk's Office, City Hall, 402 North Shiawassee Street, Corunna, Michigan.	
Hamburg (Township), Livingston County (FEMA Docket No. 6521)	
Huron River:	
Downstream corporate limit.....	*854
Upstream corporate limit.....	*860
South Branch Huron River:	
About 3,450 feet downstream of Beach Road.....	*855
About 1,000 feet upstream of Beach Road.....	*855
One Lake: Shoreline.....	*860
Zukley Lake: Shoreline.....	*856
Maps available for inspection at the Clerk's Office, Town Hall, 7209 Stone Street, Hamburg, Michigan.	

PROPOSED BASE (100-YEAR) FLOOD
ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Woodhaven (City), Wayne County (FEMA Docket No. 6658)	
Brownstown Creek:	
Just upstream of Vreeland Road.....	*590
About 2,100 feet upstream of West Road.....	*600
Marsh Creek:	
Just upstream of Vreeland Road.....	*588
Just downstream of King Road.....	*592
Clee Drain East:	
At mouth.....	*591
About 1,900 feet upstream of Van Horn Road.....	*593
Clee Drain West:	
At mouth.....	*593
About 5,000 feet upstream of mouth.....	*594
Maps available for inspection at the City Clerk's Office, City Hall, 21869 West Road, Woodha- ven, Michigan.	
MISSOURI	
Jackson (City), Cape Girardeau County (FEMA Docket No. 6648)	
Hubble Creek:	
At confluence of Goose Creek.....	*399
About 1.08 miles upstream of North High Street.....	*451
Goose Creek:	
At mouth.....	*399
About 1.85 miles upstream of East Main Street.....	*470
Rocky Branch:	
Just upstream of County Highway PP.....	*410
About 140 feet downstream of State Highway 72.....	*426
About 150 feet upstream of State Highway 72.....	*433
About 170 feet downstream of Oak Street.....	*435
Just upstream of Oak Street.....	*443
About 230 feet downstream of County Highway D.....	*462
Just upstream of County Highway D.....	*468
Neal Creek:	
At mouth.....	*427
About 1,200 feet upstream of Shawnee Avenue.....	*484
Maps available for inspection at City Hall, 225 South High, Jackson, Missouri.	
Lupus (City), Moniteau County (FEMA Docket No. 6658)	
Missouri River: Within community.....	
Maps available for inspection at the City Hall, Lupus, Missouri.	
MONTANA	
Lima (Town), Beaverhead County (FEMA Docket No. 6665)	
Junction Creek: 25 feet upstream from the center of 3rd Avenue.....	
Maps available for inspection at the Town Hall, Lima, Montana.	
NEVADA	
Carson City (City), Independent City (FEMA Docket No. 6640)	
Carson River: 65 feet upstream from the center of Deer Run Road.....	*4,601
Clear Creek: 10 feet upstream from the center of Lupin Drive.....	*4,755
Golf Course Creek A: 10 feet upstream from the center of U.S. Highway 50.....	*4,616
Golf Course Creek B: The center of U.S. Highway 50.....	*4,616
Kings Canyon Creek:	
40 feet upstream from the center of Butti Way.....	*4,625
On Custer Circle, 250 feet northwest from inter- section with Canyon Road.....	#1
Goni Canyon Creek:	
10 feet upstream from the center of Long Street.....	*4,638
10 feet upstream from the center of Arrowhead Drive.....	*4,718

PROPOSED BASE (100-YEAR) FLOOD
ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Eagle Valley Creek: The center of Eagle Valley Ranch Road.....	*4,753
Ash Canyon Creek: On Ash Canyon Road, 200 feet from intersection with Cogorno Way.....	#1
Vicee Canyon Creek: On V&T Way, 1,300 feet southeast from intersection with West Nye Lane.....	#1
Combs Canyon Creek:	
On Nye Lane, 280 feet west from intersection with U.S. Highway 395.....	*4,726
On West Ormsby Boulevard (Foothill Road), 200 feet north from intersection with Combs Canyon Road.....	#1
H Tributary: On Rook Road, 140 feet southwest from intersection with Oregon Street.....	*4,650
Voltaire Canyon Creek:	
On Fairview Drive, 590 feet west from intersec- tion with Kansas Street.....	*4,655
The intersection of Lupin Drive and Kootz Lane.....	*4,745
Voltaire Split: The intersection of Kootz Lane and Silver Sage Drive.....	#1
Salman Road Tributary: On Clearview Drive, 140 feet west from intersection with Salman Road.....	*4,708
Maps available for inspection at Department of Public Works, 2621 Northgate Lane, Carson City, Nevada.	
NEW JERSEY	
East Hanover (Township), Morris County (FEMA Docket No. 6658)	
Passaic River:	
At confluence of Rockaway River.....	*174
At upstream corporate limits.....	*176
Rockaway River: Entire length within corporate limits.....	*174
Whippany River:	
At confluence with Rockaway River.....	*174
Downstream of Morristown and Erie Railroad.....	*178
Upstream of railroad spur.....	*180
At upstream corporate limits.....	*182
Black Brook: Entire length within corporate limits.....	*182
Pinch Brook: Entire length within corporate limits.....	*182
Maps available for inspection at the Municipal Building, 411 Ridgedale Avenue, East Hanover, New Jersey.	
Elizabeth (City), Union County (FEMA Docket No. 6665)	
Elizabeth River:	
At confluence with Arthur Kill.....	*8
Upstream Corporate Limits.....	*18
Arthur Kill:	
At Goethals Bridge.....	*9
At confluence with Newark Bay.....	*8
Newark Bay:	
At confluence with Arthur Kill.....	*8
At confluence with Elizabeth Channel.....	*9
Maps available for inspection at Municipal En- gineers Office, City Hall, 3rd Floor, Windfield Scott Plaza, Elizabeth, New Jersey.	
Ho-Ho-Kus (Borough), Bergen County (FEMA Docket No. 6658)	
Ho-Ho-Kus Brook:	
At downstream corporate limits.....	*112
Upstream side of CONRAIL.....	*149
At upstream corporate limits.....	*187
Saddle River: At downstream corporate limits.....	*90
Maps available for inspection at the Borough Hall, Ho-Ho-Kus, New Jersey.	
Middlesex (Borough of), Middlesex County (FEMA Docket No. 6665)	
Raritan River:	
Approximately 2,000 feet downstream of conflu- ence of Green Brook.....	*32
At confluence of Green Brook.....	*33
Green Brook:	
At its confluence with the Raritan River.....	*33
At upstream corporate limits.....	*49

PROPOSED BASE (100-YEAR) FLOOD
ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Bound Brook:	
At its confluence with Green Brook	*43
At upstream corporate limits	*48
Ambrose Brook:	
At its confluence with Green Brook	*35
At upstream corporate limits	*43
Bonygutt Brook:	
At its confluence with Green Brook	*46
Upstream corporate limits	*54
Maps available for inspection at the Municipal Building, 1200 Mountain Avenue, Middlesex, New Jersey, c/o Mike Duffy, Construction Official.	
Parippany-Troy Hills (Township), Morris County (FEMA Docket No. 6625)	
Rockaway River:	
At downstream corporate limits (confluence of Whippary River)	*174
At U.S. Route 46	*175
At Vail Road	*177
Upstream Knoll Road	*184
Upstream Greenback Road	*199
Downstream Boonton Reservoir Dam	*212
Upstream Boonton Reservoir Dam	*309
Upstream corporate limits	*313
Whippary River:	
At confluence with Rockaway River	*174
At upstream corporate limits	*178
Troy Brook:	
At confluence with Whippary River	*175
Upstream side of Beverwyck Road	*196
Upstream side of Troy Road	*207
Upstream side of Spillway at Forge Pond	*227
Upstream side of Smith Road (2nd upstream crossing)	*263
Upstream side of Interstate Route 80	*274
Upstream side of Interstate Route 287	*291
Upstream side of Parsippany Boulevard	*302
Upstream side of Homer Street	*310
Downstream side of Cherry Mill Road	*319
West Brook:	
At confluence with Troy Brook	*175
Upstream side of Beverwyck Road	*177
Upstream side of Preston Road	*202
Upstream side of West Brook Pond Dam	*208
Eastmans Brook:	
At confluence with Troy Brook	*212
Upstream side of Old Spillway Ruins	*226
Downstream side of Smith Road	*239
At UPS Boulevard	*251
Downstream side of Interstate Route 287 culvert	*272
Shoreline of Lake Parsippany	*286
Watrong Brook:	
Upstream side of State Route 10 Culvert	*446
Approximately 430' upstream of Foot Bridge (opposite Tarn Drive)	*459
Approximately 150' downstream of CONRAIL	*470
At Powder Mill Road	*506
Maps available for inspection at the Township Engineer's Office, Township Municipal Building, Parsippany-Troy Hills, New Jersey.	
NEW YORK	
Carthage (Village), Jefferson County (FEMA Docket No. 6648)	
Black River:	
Downstream corporate limits	*688
Upstream side of Carthage State Dam	*732
Upstream corporate limits	*735
Maps available for inspection at the Village Hall, Carthage, New York.	
Fenner (Town), Madison County (FEMA Docket No. 6658)	
Chittenango Creek:	
Downstream corporate limits	*548
Approximately 1.1 miles downstream State Route 13	*620

PROPOSED BASE (100-YEAR) FLOOD
ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Approximately 0.4 miles downstream State Route 13	*700
Downstream side of State Route 13	*680
Downstream side of Bingley Road	*1,004
Upstream corporate limits	*1,068
Maps available for inspection at the Town Clerk's Home, David Shepherd, Shepherd Road, Fenner, New York.	
Lettingtown (Village), Nassau County (FEMA Docket No. 6665)	
Long Island Sound:	
Shoreline at western corporate limits	*20
Intersection of Meudon and Parish Drives	*13
Shoreline at Fox Point	*19
Approximately 900 feet northeast of intersection of Sheep and Fox Lanes	*12
Mill Neck Creek:	
Shoreline at Millford Drive (extended)	*12
Shoreline at southern corporate limits	*14
Maps available for inspection at the Village Attorney's Office, Locust Valley, New York.	
St. Armand (Town), Essex County (FEMA Docket No. 6648)	
Saranac River:	
Approximately 450 feet downstream of Sewage Disposal Plant Access Road	*1,515
Upstream corporate limits	*1,522
Maps available for inspection at the Town Hall, Main Street, Bloomingdale, New York.	
Warwick (Village of), Orange County (FEMA Docket No. 6665)	
Wawayanda Creek:	
Approximately 300 feet downstream of corporate limits	*507
At Forester Avenue	*520
Approximately 6 mile upstream of upstream corporate limits	*521
South Tributary to Wawayanda Creek:	
At confluence with Wawayanda Creek	*520
At Stanley Deming Park Footbridge	*528
Approximately 300 feet upstream of State Route 17A	*537
Maps available for inspection at the Village Hall, 77 Main Street, Warwick, New York.	
West Carthage (Village), Jefferson County (FEMA Docket No. 6648)	
Black River:	
Downstream corporate limits	*689
Upstream side of Carthage State Dam	*732
Upstream corporate limits	*734
Maps available for inspection at the Village Hall, 10 North Jefferson Street, Carthage, New York.	
NORTH CAROLINA	
Aurora (City), Beauford County (FEMA Docket No. 6640)	
Atlantic Ocean/Bailly Creek: Within community	*6
Maps available for inspection at the Town Hall, P.O. Box 86, Aurora, North Carolina.	
Belhaven (Town), Beauford County (FEMA Docket No. 6640)	
Atlantic Ocean:	
Along shoreline of Pantego Creek and Pungo River	*8
Along northern Extraterritorial Limits from U.S. Highway 264 (Bypass) to about 3800 feet southwest of SR 1706	*9
Maps available for inspection at the Town Hall, Belhaven, North Carolina.	

PROPOSED BASE (100-YEAR) FLOOD
ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Dare County (Unincorporated Areas), (FEMA Docket No. 6648)	
Atlantic Ocean:	
At the intersection of NC 12 and SR 1241	*6
Along shoreline from northern county boundary to Oregon Inlet	*12
Atlantic Ocean/Pamlico Sound:	
About 1,000 feet south of U.S. Highway 264 from the bridge over Long Shoal River to the bridge over Deep Creek	*5
At the intersection of NC 12 and Forest Road	*8
Atlantic Ocean/Roanoke Sound:	
At the intersection of Dogwood Circle and Scuppernon Road	*9
At the intersection of SR 1141 and SR 1143	*11
Atlantic Ocean/Croatan Sound:	
At the intersection of SR 1111 and SR 1112	*7
At Manna Harbor Ferry Landing	*9
Atlantic Ocean/Oregon Inlet/Davis Channel/Ocean Sound/Roanoke Sound:	
Entire shoreline of Smith Island	*9
Atlantic Ocean/Currituck Sound:	
At the intersection of Duck Road and Dune Road	*7
At Martin Point	*8
Atlantic Ocean/Albemarle Sound:	
Along SR 1113 near Mashoes	*7
At Caroon Point	*10
Atlantic Ocean/Albemarle Sound/Croatan Sound/Pamlico Sound:	
Along Alligator River shoreline between Cypress Point and Bay Point	*4
At Ned Bees Point	*7
Maps available for inspection at the County Administration Building, Budleigh Street, Mantoo, North Carolina.	
Kill Devil Hills (Town), Dare County (FEMA Docket No. 6648)	
Atlantic Ocean:	
About 50 feet west of shoreline from northern corporate limits to Lake Drive	*11
Along shoreline	*12
Atlantic Ocean/Roanoke Sound/Colington Creek:	
Along shoreline on western corporate limits	*9
Along Virginia Dare Trail from Archdale Street to southern corporate limit	*9
Maps available for inspection at the Town Hall, Kill Devil Hills, North Carolina.	
Laurinburg (City), Scotland County (FEMA Docket No. 6658)	
Leth Creek:	
About 1,050 feet downstream of Church Street	*194
Just downstream of Laurinburg and Southern Railroad	*196
Just upstream of Laurinburg and Southern Railroad	*199
About 3,000 feet upstream of Gill Street	*208
Maps available for inspection at the City Hall, 303 West Church Street, Laurinburg, North Carolina.	
Nags Head (Town), Dare County (FEMA Docket No. 6648)	
Atlantic Ocean:	
About 200 feet west of shoreline from East Curlew Street to about 600 feet south of East Hollowell Street	*9
About 150 feet west of shoreline from East Dune Street to about 700 feet south of East Forrest Street	*9
About 200 feet west of shoreline from East Hargrove Street to about 300 feet north of East Idle Street	*9
About 150 feet west of shoreline from East Indigo Street to about 200 feet north of East June Street	*9

PROPOSED BASE (100-YEAR) FLOOD
ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
About 175 feet west of shoreline from about 600 feet north of East Jacob Street to East Juncos Street	*9
About 175 feet west of shoreline from East Surfside Drive to about 250 feet south of East Seagull Drive	*9
Along shoreline	*12
Roanoke Sound:	
At the intersection of East Abalone Street and South Memorial Avenue	*9
Along shoreline	*9
At the intersection of West Sound Side Road and South Croatan Highway	*9
At the intersection of Hawksnest Street and South Virginia Dare Trail	*9
Along western corporate limits from East Gulfstream Street to southern corporate limits	*9
At the intersection of East Gulf Street and South Virginia Dare Trail	*9
Maps available for inspection, at the Town Hall, Nags Head, North Carolina.	
Nashville (Town), Nash County (FEMA Docket No. 6658)	
Stony Creek:	
About 240 feet downstream of County Route 1600	*131
About 290 feet upstream of U.S. Route 64 Bypass (U.S. Route 64 Bypass upstream of West Washington Street)	*152
Maps available for inspection at the Town Hall, 11 North Boddie Street, Nashville, North Carolina.	
Shallotte (Town), Brunswick County (FEMA Docket No. 6658)	
Shallotte River: Within community	*11
Mulberry Branch:	
At mouth	*11
About 2,300 feet upstream of Bridgers Drive	*13
Charles Branch:	
At mouth	*11
About 700 feet upstream of Smith Street	*11
Maps available for inspection at the Town Hall, Shallotte, North Carolina.	
NORTH DAKOTA	
Mott (City), Hettinger County (FEMA Docket No. 6665)	
Cannonball River: At the intersection of Michigan Avenue and Railroad Avenue	*2,381
Maps available for inspection at Auditor's Office, 202 East 3rd, Mott, North Dakota.	
OHIO	
Chauncey (Village), Athens County (FEMA Docket No. 6658)	
Hocking River:	
At confluence of Sunday Creek	*661
About 1,800 feet upstream of Conrail	*662
Sunday Creek: Within community	*661
Maps available for inspection at the Village Hall, 42 Converse Street, Chauncey, Ohio.	
Killbuck (Village), Holmes County (FEMA Docket No. 6658)	
Killbuck Creek:	
About 0.4 mile downstream of Front Street	*612
About 0.4 mile upstream of abandoned railroad	*614
Maps available for inspection at the Mayor's Office, Killbuck, Ohio.	
Logan (City), Hocking County (FEMA Docket No. 6658)	
Hocking River:	
About 1,300 feet downstream of State Route 328	*717
About 2,500 feet upstream of State Route 664	*737

PROPOSED BASE (100-YEAR) FLOOD
ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Maps available for inspection at the City Building, Logan, Ohio.	
Manasfield (City), Richland County (FEMA Docket No. 6658)	
Rocky Fork:	
About 1,150 feet downstream of confluence of Painters Creek	*1,138
About 0.7 mile upstream of Old Bowman Street	*1,159
Touby Run:	
At confluence with Rocky Fork	*1,150
Just downstream of Bowman Street	*1,169
Painters Creek:	
At confluence with Rocky Fork	*1,139
Just downstream of Grace Street	*1,182
Maps available for inspection at the City Building, 30 North Diamond Street, Mansfield, Ohio.	
Mt. Blanchard (Village), Hancock County (FEMA Docket No. 6658)	
Blanchard River:	
About 1,500 feet downstream of Norfolk Southern Railway	*824
About 600 feet upstream of Clay Street	*831
Maps available for inspection at the Mayor's Office, Mt. Blanchard, Ohio.	
Nelsonville (City), Athens County (FEMA Docket No. 6658)	
Hocking River:	
About 1,500 feet upstream of State Route 691	*678
About 0.9 mile upstream of Lake Hope Drive	*690
Maps available for inspection at the City Building, 29 Fayette Street, Nelsonville, Ohio.	
Ottawa (Village), Putnam County (FEMA Docket No. 6658)	
Blanchard River:	
About 1.2 miles downstream of confluence of Tawa Run	*725
About 1.9 miles upstream of Detroit, Toledo, and Ironton Railroad	*732
Tawa Run:	
At mouth	*726
About 1.0 mile upstream of Agner Street	*735
Shallow Flooding (Sheet flow from Blanchard River to Tawa Run):	
At the intersection of Locust Street and Fourth Street	#1
At the intersection of Hall Street and Main Street	#1
About 200 feet south of the intersection of Locust Street and Main Street	#2
Maps available for inspection at the Municipal Building, 136 North Oak Street, Ottawa, Ohio.	
OREGON	
Hubbard (City), Marion County (FEMA Docket No. 6658)	
Mill Creek: 60 feet upstream of center of Hubbard Boones Ferry Road	*138
Maps available for inspection at the Public Works Department, City Hall, Hubbard, Oregon.	
PENNSYLVANIA	
South Londonderry (Township), Lebanon County (FEMA Docket No. 6665)	
Killing Creek:	
Killing Creek at northern corporate limits	*415
Downstream side of U.S. Route 322	*446
Approximately 2,950' upstream of U.S. Route 322	*464
Maps available for inspection at the Township Municipal Building, West Market and Center Street, Cambellton, Pennsylvania.	

PROPOSED BASE (100-YEAR) FLOOD
ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
RHODE ISLAND	
Jamestown (Town), Newport County (FEMA Docket No. 6645)	
Rhode Island Sound:	
Shoreline at Beavertail Point	*27
Shoreline 1,000 feet north of Lion Head	*35
Shoreline 100 feet north of Hope Street (extended)	*24
Shoreline at Hull Cove	*18
Narragansett Bay:	
Shoreline at Short Point	*30
Shoreline 500 feet south of Fort Getty Road (extended)	*18
Shoreline at Fort Getty Road (extended)	*14
Shoreline 50 feet east of Southwest Point	*39
Entire Shoreline of Fort Cove	*15
Shoreline at Newport Bridge	*16
Shoreline of Sheffield Cove at Pierce Avenue (extended)	*14
Shoreline of Dutch Island at southernmost point	*17
Shoreline at western end of Narragansett Boulevard (extended)	*19
Jamestown Brook:	
Upstream side Lower Jamestown Reservoir Dam	*18
Upstream side of North Main Road	*25
Downstream side of Eldred Avenue	*27
Sheffield Cove Brook:	
Upstream Maple Avenue	*12
Upstream side of Narragansett Avenue	*34
Seacon Avenue Tributary:	
Approximately 80 feet downstream of Seaside Drive	*12
Upstream side of Seaside Drive	*20
Downstream side of Beach Avenue	*55
Upstream side of Steamboat Street	*59
Downstream side of Spicketing Street	*60
Conanicut Brook:	
Approximately 440 feet downstream of East Shore Road	*15
Approximately 50 feet downstream of East Shore Road	*26
Approximately 200 feet upstream of Park Avenue	*45
Maps available for inspection at the Clerk's Office, Town Hall, Jamestown, Rhode Island.	
Pawtucket (City), Providence County (FEMA Docket No. 6649)	
Seekonk River:	
At Bishop Street (extended)	*19
Western shoreline at Ridge Avenue (extended)	*18
At Englewood Avenue (extended)	*18
Approximately 150 feet west of western shoreline at Lyman Street (extended)	*17
At I-95	*16
Shoreline at corporate limits	*19
Shoreline at Exeter Avenue (extended)	*18
Approximately 150 feet west of western shoreline at Lyman Street (extended)	*17
Shoreline at Winter Street (extended)	*18
Maps available for inspection at the Office of City Engineer, 3rd Floor, Pawtucket City Hall and Planning Department, 200 Main Street, Pawtucket, Rhode Island.	
South Kingstown (Town), Washington County (FEMA Docket No. 6649)	
Saugatucket River:	
At Silver Lake Road	*10
Approximately 250 feet upstream of Church Street	*17
Upstream side of Saugatucket Pond Dam	*32
Upstream side of Saugatucket Road	*35
Block Island Sound:	
Shoreline at West corporate limits	*18
Area at south end of Rose Briar Avenue	*12
Area at south end of Moonstone Beach Road	*15
Sheet flow area along south end of Matunuck Beach Road	*2
Shoreline at east corporate limits	*19

PROPOSED BASE (100-YEAR) FLOOD
ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground Elevation in feet (NGVD)
Area at south end of Dory Court (extended approximately 100 feet)	*10
Shoreline at Jerry Brown Farm Road (extended)	*12
Entire shoreline of Silver Spring Cove	*11
Rhode Island Sound: Entire shoreline of Pettaquamscutt River within community	*11
Maps available for inspection at the Town Planning Office, Town Hall, South Kingstown, Rhode Island.	
Westerly (Town), Washington County (FEMA Docket No. 6658)	
Masthead Brook:	
Approximately 430' downstream of Watch Hill Road	*11
Approximately 900' upstream of Watch Hill Road	*13
Approximately 950' miles downstream of Airport Road	*39
Downstream of Airport Road	*41
Pawcatuck River:	
Approximately 1,950' downstream of State Route 78	*11
Upstream side of State Route 78	*15
Upstream side of dam located below Bridge and Boombridge Roads	*23
Upstream side of Boombridge Road	*26
Approximately 100' upstream of Potter Hill Road	*33
Upstream side of Main Street	*38
Upstream corporate limits	*39
Block Island Sound:	
Shoreline of Thompson Cove within community	*11
Shoreline at Watch Hill Point	*24
Shoreline at Shore Gardens (extended south)	*18
Shoreline at corporate limits at Weekapaug Beach	*18
Block Island Sound: Sheet Flow Areas within Community	*2
Block Island Sound: Ponding Areas within Community	*12
Maps available for inspection at the Office of the Westerly Town Clerk, Town Hall, Westerly, Rhode Island.	

TENNESSEE

Waverly (City), Humphreys County, (FEMA Docket No. 6648)	
Trace Creek:	
About 1.7 miles downstream of Brown Town Road	*441
About 1.8 miles upstream of U.S. Highway 70	*615
Tributary A:	
Mouth at Trace Creek	*506
Just upstream of the Louisville and Nashville Railroad	*515
About 3,400 feet upstream of Louisville and Nashville Railroad	*556
Tributary B:	
Mouth at Trace Creek	*519
Just downstream of the upstream Little Richland Road crossing	*586
Tributary C:	
Mouth at Trace Creek	*531
About 0.8 mile upstream of North Railroad Street	*587
Tributary D:	
Mouth at Trace Creek	*572
About 1.6 miles upstream of the Louisville and Nashville Railroad	*662
Maps available for inspection at City Hall, 103 East Main Street, Waverly, Tennessee.	

TEXAS

Freeport (City), Brazoria County (FEMA Docket No. 6658)	
Gulf of Mexico:	
Area in vicinity of Brazos and Stauffer Turning Basin	*12
Corporate limits adjacent to Intercoastal Waterway	*12

PROPOSED BASE (100-YEAR) FLOOD
ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground Elevation in feet (NGVD)
Corporate limits at confluence of Upper Turning Basin and Brazos Harbor	*12
Extreme southern portion of community (south of levee located south of FM 242)	*12
Southwestern tip of community	*7
West of Brazos River's right bank levee (approximately 8,500' south of State Route 36)	*9
Shallow Flooding:	
Brazos River: South of State Route 288	*1
Oyster Creek: South of State Route 332	*1
Maps available for inspection at the City Hall, 126 East Fourth Street, Freeport, Texas.	
Martindale (Town), Caldwell County (FEMA Docket No. 6643)	
San Marcos River:	
At downstream corporate limits	*515
At upstream corporate limits	*541
Maps available for inspection at the City Hall, City of Martindale, Texas.	

WASHINGTON

Chewelah (City), Stevens County (FEMA Docket No. 6658)	
Chewelah Creek: Intersection of Lincoln Avenue and Park Street (U.S. Highway 395)	*1,674
Piye Creek: 50 feet upstream of center of Lincoln Avenue	*1,678
Thomson Creek: At the confluence with East and West Thomson Creeks	*1,680
East Thomson Creek: 50 feet upstream of Main Street	*1,669
West Thomson Creek: 30 feet upstream of Lincoln Avenue	*1,679
Maps available for inspection at Public Works Department, City Hall, Chewelah, Washington.	
Mukilteo (City), Snohomish County (FEMA Docket No. 6659)	
Possession Sound: Along entire Coastline within corporate limits	*10
Maps available for inspection at Planning Department, City Hall, Mukilteo, Washington.	
Winslow (City), Kitsap County (FEMA Docket No. 6658)	
Puget Sound (Eagle Harbor): 200 feet east from the center of the intersection of Paritts Way SW and Madison Avenue S	*10
Maps available for inspection at City Hall, Winslow, Washington.	

WEST VIRGINIA

Hurricane (City), Putnam County (FEMA Docket No. 6658)	
Hurricane Creek:	
Approximately .4 mile downstream of downstream crossing of State Route 34	*621
Downstream side of Lakeview Drive	*628
Most upstream corporate limits	*634
Maps available for inspection at the Town Hall, Hurricane, West Virginia.	

WISCONSIN

Unincorporated Areas of Lincoln County (FEMA Docket No. 6665)	
Wisconsin River:	
At southern country boundary	*1,224
Just upstream of Alexander Dam	*1,276
Just downstream of Grandfather Dam	*1,308
Just upstream of Grandfather Dam	*1,397
Just downstream of Grandmother Dam	*1,410
Just upstream of Grandmother Dam	*1,419
Just downstream of Tomahawk Dam	*1,429
Just upstream of Tomahawk Dam	*1,435
Just downstream of Kings Dam Powerplant	*1,435

PROPOSED BASE (100-YEAR) FLOOD
ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground Elevation in feet (NGVD)
Just upstream of Kings Dam Powerplant	*1,456
About 1.95 miles upstream of confluence of Trout Creek	*1,480
Prairie River:	
Just downstream of Ward Paper Company Dam	*1,263
Just upstream of Ward Paper Company Dam	*1,269
Just downstream of Prairie Dell Dam	*1,355
Tomahawk River:	
About 0.35 mile upstream of Jersey City Dam	*1,451
Just downstream of Rice Dam	*1,454
Just upstream of Rice Dam	*1,463
At northern county boundary	*1,463
Spirit River:	
At mouth	*1,428
Just downstream of Spirit River Dam	*1,428
Just upstream of Spirit River Dam	*1,438
About 2.1 miles upstream of Faust Road	*1,442
Little Somo River:	
At confluence with Somo River	*1,440
Just downstream of U.S. Highway 6	*1,456
Somo River:	
At mouth	*1,435
At confluence of Little Somo River	*1,440
Maps available for inspection, at the Zoning Administrator's Office, County Courthouse, 1110 East Main Street, Merrill, Wisconsin.	

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The modified base (100-year) flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Any appeals of the proposed base flood elevations which were received have been resolved by the Agency.

PROPOSED BASE (100-YEAR) FLOOD
ELEVATIONS

Source of flooding and location	#Depth in feet above ground Elevation in feet (NGVD)
CALIFORNIA	
Ventura County (Unincorporated Areas) (FEMA Docket No. 6645)	
Ventura River:	
25 feet upstream from the center of Shell Road	*129
Intersection of Burnham and Chaparral Roads	*406
25 feet upstream from the center of Camino Cielo Road	*885
50 feet east from the center of the northbound lane of the Ojai Freeway 2300 feet south of its crossing of the Southern Pacific Railroad	*130
Ventura River (Without Consideration of Levees): Intersection of Edison and Sycamore Drives	*262
San Antonio Creek:	
60 feet upstream from the center of State Highway 33	*322
130 feet upstream from the center of Grand Avenue	*815
Intersection of Thacher and Ladera Roads	*2
Thacher Creek:	
Intersection of Camino Del Arroyo and Avenida Del Recero	*788

PROPOSED BASE (100-YEAR) FLOOD
ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Intersection of Grand Avenue and McAndrew Road	#1
Reeves Creek: Intersection of McAndrew and Reeves Roads	*99
Stewart Canyon Creek: 35 feet upstream from the center of Creek Road	*84
Happy Valley Drain: Center of Bosant Road 50 feet east of its intersection with Lomita Avenue	*72
Miraponte Drain: 30 feet upstream from the center of Loma Drive	*65
Happy Valley Drain South: Center of Rice Road 120 feet north of its intersection with Baldwin Road	*59
Coyote Creek: 130 feet upstream from the center of Camp Chaffee Road	*24
Santa Clara River: Intersection of river and the center of U.S. Highway 101	*6
25 feet upstream from the center of Torrey Canyon Road	*62
Piru Creek: Intersection of Creek and the center of Center Street	*68
Sage Creek: Center of Bridge Street 1000 feet east of its intersection with Grand Avenue	*54
Santa Paula Creek: Intersection of creek and center of Steckel Park Road	*79
Center of Telegraph Road 600 feet west of its intersection with Ferns Drive	#
Conjajo Creek: 200 feet upstream from the center of Moorpark Road	*10
Arroyo Santa Rosa: 100 feet upstream from the center of Moorpark Road	*60
Arroyo Santa Rosa Overflow: Center of Rosa Road 1,100 feet east of its intersection with Penelope Place	*31
Center of Santa Rosa Road 100 feet west of its intersection with Penelope Place	*30
Arroyo Santa Rosa Tributary: Center of Santa Rosa Road 2200 feet east of its intersection with Penelope Place	*30
Caliguaga Creek—Arroyo Las: 50 feet upstream from the center of Seminary Road	*22
Pecos—Arroyo Sem: Intersection of creek and center of Seminary Road	*41
Peach Hill Wash: 850 feet east of the intersection of Citrus Drive and Hich Boulevard	*45
Las Posas Estates Drain: 50 feet upstream from the center of Central Avenue	*7
South Branch Arroyo Conjajo: Intersection of Henry and Michael Drives	*65
Bell Canyon Creek: 100 feet upstream from the center of East Bell Canyon Road	*1,07
Santa Clara River Breakout: Intersection of Harbor Boulevard and Gonzales Road	1
Brown Barranca: 80 feet downstream from the center of Telegraph Road	*23
200 feet north from the center of State Highway 126, 1500 feet northeast of its intersection with Wells Road	*18
Harmon Barranca: 200 feet southeast of the intersection of Norton Avenue and Harmon Drive	*14
Beardsley Wash: 250 feet upstream from the center of Wright Road	*14
Camarillo Hills Drain: 2100 feet south from the intersection of the Ventura Freeway and Central Avenue	*6
Pole Creek: 20 feet upstream from the Southern Pacific Railroad	*41
Santa Paula Creek Overflow Profile Base Line Number 1: 150 feet south from the center of Maple Street, 850 feet east of its intersection with Mariposa Drive	*41
Santa Paula Creek Overflow Profile Base Line Number 3: 125 feet south from the center of its intersection with Mariposa Drive	*41
Santa Paula Creek Breakout: Center of Whipple Road, 200 feet south of its intersection with Telegraph Road	#
Center of Ferns Drive, 50 feet north of its intersection with Telegraph Road	*31
El Rio Drain: 2300 feet south along Cortez Street from its intersection with Stoube Street	

PROPOSED BASE (100-YEAR) FLOOD
ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
<i>Santa Clara Drain:</i> 200 feet west of the intersection of Santa Clara Avenue and Friedrich Road.	78
<i>Nylund Drain:</i> 300 feet north from the center of U.S. Highway 101, 300 feet west of its crossing of Beardsley Wash.	#2
<i>Mills Road Drain:</i> Center of the Southern Pacific Railroad, 150 feet west of its intersection with U.S. Highway 101.	#6
<i>Sunset Hills Drain:</i> 600 feet east from the center of Moorpark Road 3500 feet south of its intersection with Tierra Valley Road.	#2
<i>Pacific Ocean:</i> 120 feet south from the intersection of Padre Juan Canyon Road and State Highway 1.	#1
350 feet south from the intersection of Yerba Buena Road and the Pacific Coast Highway.	#11
Maps available for inspection at the Department of Public Works, 800 South Victoria Avenue, Ventura, California.	
MASSACHUSETTS	
Beverly (Town), Essex County (FEMA Docket No. 6645)	
<i>Massachusetts Bay:</i> At intersection of Hale Street and eastern corporate limits.	#
At intersection of Boston and Maine Railroad and eastern corporate limits.	#1
At eastern corporate limits.	#2
Shoreline 0.5 mile southwest of eastern corporate limits.	#
Approximately 500 feet southwest of intersection of Boston and Maine Railroad and West Street.	#
Approximately 250 feet northeast of end of Haven Street Drive.	#
At end of Second Avenue.	#
Shoreline at Second Avenue extended.	#1
Approximately 300 feet northeast of south end of Pickman Road.	#1
Shoreline approximately 0.5 mile west of Paine Avenue extended.	#2
Shoreline approximately 1,900 feet east of mouth of Centerville Creek.	#3
Approximately 1,000 feet east of eastern intersection of Hale Street and Witch Lane.	#
Approximately 1,000 feet south of intersection of Hale and Prince Streets.	#1
Shoreline at Prince Street extended.	#1
<i>Beverly Harbor:</i> Shoreline at Hospital Point.	#3
Approximately 700 feet southwest along Lother Street from intersection with Hale Street.	#1
Shoreline at Elm Top Lane extended.	#1
<i>North Beverly Drainage Ditch:</i> Approximately 50 feet upstream of Boston and Maine Railroad.	#1
Upstream side of Russell Street.	#2
<i>Chubb's Brook:</i> Upstream side of Beach Street.	#1
Upstream side of Oak Street.	#1
Approximately 50 feet upstream of Hale Street.	#2
<i>Centerville Creek:</i> Approximately 110 feet downstream of Hale Street.	#1
Downstream side of Tall Tree Drive.	#4
Upstream side of Common Lane Street.	#5
Maps available for inspection at the City Hall, Department of Public Works, Beverly, Massachusetts.	
Gloucester (City), Essex County (FEMA Docket No. 5625)	
<i>Mill River:</i> Upstream side of Dr. Osman Babson Road.	#1
Upstream side of Cherry Street.	#1
Approximately 600 feet upstream of Cherry Street.	#2
<i>Atlantic Ocean Essex Bay:</i> South shore of Essex Bay.	#1
<i>Ipswich Bay:</i> Entire shoreline of Wingersheek Beach.	#1
Shoreline at Folly Point.	#1

PROPOSED BASE (100-YEAR) FLOOD
ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Approximately 300 feet past end of Atlantic Street	#1
Massachusetts Bay: Shoreline at Normans Woe Cove	"30
Gloucester Harbor:	
Shoreline at Western Harbor	"13
Entire shoreline of Inner Harbor	"10
East shore of Gloucester Harbor	"12
Briar Neck: Shoreline at Briar Neck	"25
Maps available for inspection at the City Library, Gloucester, Massachusetts, and the Planning Office, Forbes Building, Gloucester, Massachusetts.	
NEBRASKA	
Lincoln (City), Lancaster County (FEMA Docket No. 6625)	
Self Creek:	
About 0.5 mile downstream of 98th Street	"1,121
Just upstream of confluence of Cardwell Branch	"1,177
Stevens Creek:	
At mouth	"1,131
Just downstream of Chicago, Rock Island and Pacific Railroad	"1,148
Just upstream of Chicago, Rock Island and Pacific Railroad	"1,154
About 1.2 miles upstream of A Street	"1,203
Stevens Creek Overflow:	
At confluence with Salt Creek	"1,124
At divergence from Stevens Creek	"1,140
Stevens Creek Tributary:	
At mouth	"1,185
About 1.85 miles upstream of 112th Street	"1,249
Oak Creek:	
Confluence with Salt Creek	"1,141
Just upstream of U.S. Highway 34	"1,179
Lynn Creek:	
At mouth	"1,148
About 800 feet upstream of Interstate 80	"1,163
Elk Creek:	
At mouth	"1,176
About 0.85 mile upstream of U.S. Highway 34	"1,245
Antelope Creek:	
At mouth	"1,148
Just downstream of Holmes Lake Dam	"1,214
Just upstream of Holmes Lake Dam	"1,246
About 1.4 miles upstream of Pioneer Boulevard	"1,306
Middle Creek:	
At mouth	"1,153
About 1.3 miles upstream of Interstate 80	"1,206
Haines Branch:	
At mouth	"1,155
About 800 feet upstream of Burlington Northern railroad	"1,171
Beal Slough:	
At mouth	"1,158
Just downstream of Burlington Northern railroad (upstream of Pine Lake Road)	"1,272
Just upstream of Burlington Northern railroad (upstream of Pine Lake Road)	"1,276
About 150 feet upstream of South 70th Street	"1,294
Cardwell Branch:	
At mouth	"1,177
About 0.70 mile upstream of Southwest 27th Street	"1,207
Maps available for inspection at the City County Building, 555 S. 10th, Lincoln, Nebraska.	
NEW JERSEY	
Englewood (City), Bergen County (FEMA Docket No. 6384)	
Overpeck Creek:	
Downstream corporate limits	"7
Englewood Avenue (upstream side)	"13
Slocum Avenue (upstream side)	"25
Upstream Cemetery Road	"57
Upstream corporate limits	"84
Tributary to Overpeck Creek:	
Confluence with Overpeck Creek	"8
Approximately 1/5 mile upstream of confluence with Overpeck Creek	"11

PROPOSED BASE (100-YEAR) FLOOD
ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Metzlers Creek:	
At confluence with Overpeck Creek	*9
Liberty Road (downstream side)	*16
Hudson Avenue (upstream side)	*57
Flat Rock Brook:	
Downstream corporate limits	*7
Broad Avenue (upstream side)	*28
Rosewood Avenue (upstream side)	*68
Van Nostrand Avenue (upstream side)	*127
Approximately 935 feet upstream of Van Nostrand Avenue	*130
Maps available for inspection at the City Hall, Englewood, New Jersey.	
NEW YORK	
North Hornell (Village), Steuben County (FEMA Docket No. 6614)	
Canisteo River:	
Downstream corporate limits	*1,153
Approximately 100 feet upstream of Seneca Street (State Routes 21 and 26)	*1,155
Upstream corporate limits	*1,162
Big Creek:	
Confluence with Canisteo River	*1,162
Upstream corporate limits	*1,182
Maps available for inspection at the Village Hall, West Maplinwood Avenue, North Hornell, New York.	
NORTH CAROLINA	
Kitty Hawk (Town), Dare County, (FEMA Docket No. 6648)	
Atlantic Ocean:	
About 150 feet west of Shoreline between East White Avenue and Tatlow Road	*8
Along shoreline	*12
Atlantic Ocean/Currituck Sound/Kitty Hawk Bay:	
Along Currituck Sound and Kitty Hawk Bay shoreline within community	*9
Maps available for inspection at the Town Hall, Kitty Hawk, North Carolina.	
OHIO	
Cambridge (City), Guernsey County (FEMA Docket No. 6568)	
Wills Creek:	
About 0.7 mile downstream of Wills Creek Valley Road	*794
About 3.1 miles upstream of Campbell Avenue	*800
Leatherwood Creek:	
Mouth at Wills Creek	*800
About 1,300 feet upstream of County Route 35	*801
Maps available for inspection at the Department of Community Development, City Hall, Cambridge, Ohio.	

Issued: October 8, 1985.

Jeffrey S. Bragg,

Administrator, Federal Insurance
Administration.

[FR Doc. 85-25229 Filed 10-23-85; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS
COMMISSION

47 CFR Part 73

[MM Docket No. 85-74; RM-4767]

FM Broadcast Station in Big Lake, TX

AGENCY: Federal Communications
Commission.

ACTION: Final rule.

SUMMARY: Action taken herein, at the request of Marvin G. Schwartz, allots FM Channel 280A to Big Lake, Texas, as that community's second FM channel.**EFFECTIVE DATE:** November 25, 1985.**ADDRESS:** Federal Communications
Commission, Washington, D.C. 20554.**FOR FURTHER INFORMATION CONTACT:**
Patricia Rawlings, Mass Media Bureau,
(202) 634-6530.**SUPPLEMENTARY INFORMATION:**

List of Subjects in 47 CFR Part 73

Radio.

The authority citation for Part 73
continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Report and Order (Proceeding
Terminated)

Adopted: October 15, 1985.

Released: October 18, 1985.

By the Chief, Policy and Rules Division:

In the matter of § 73.202(b), Table of Allotments, FM Broadcast Stations (Big Lake, Texas) MM Docket No. 85-74, RM-4767.

1. The Commission considers herein the *Notice of Proposed Rule Making*, 50 FR 14270, published April 11, 1985, proposing the allotment of Channel 280A to Big Lake, Texas, as that community's second FM channel. The *Notice* was issued in response to a petition filed by Marvin G. Schwartz ("petitioner"). Petitioner filed supporting comments restating his intention to apply for the channel.

2. The channel can be allotted in compliance with the minimum distance separation requirements in § 73.207 of the Commission's Rules. Since Big Lake is located within 320 kilometers (199 miles) of the U.S.-Mexican border, concurrence from the Mexican government has been obtained.

3. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective November 25, 1985, the FM Table of Allotments, § 73.202(b) of

the Rules, is amended with respect to the following community:

City	Channel No.
Big Lake, TX	252A, 280A

4. The filing window for applications on this channel will open on November 26, 1985, and close on December 26, 1985.

5. It is further ordered, That this proceeding is terminated.

6. For further information contact: Patricia Rawlings, Mass Media Bureau, (202) 634-6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media
Bureau.

[FR Doc. 85-25352 Filed 10-23-85; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 85-53; RM-4903]

TV Broadcast Station in Paris, IL

AGENCY: Federal Communications
Commission.

ACTION: Final rule.

SUMMARY: This action assigns UHF
television Channel 46 to Paris, Illinois,
as its first TV channel, in response to a
petition filed by Pyramid Broadcasting
Corporation of Illinois.**EFFECTIVE DATE:** November 25, 1985.**ADDRESS:** Federal Communications
Commission, Washington, D.C. 20554.**FOR FURTHER INFORMATION CONTACT:**
Montrose H. Tyree, Mass Media Bureau,
(202) 634-6530.**SUPPLEMENTARY INFORMATION:**

List of Subjects in 47 CFR Part 73

Television.

The authority citation for Part 73
continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Report and Order (Proceeding
Terminated)

Adopted: October 15, 1985.

Released: October 18, 1985.

By the Chief, Policy and Rules Division:

In the matter of Amendment § 73.606(b),
Table of Assignments, TV Broadcast Stations

(Paris, Illinois); MM Docket No. 85-53, Rm-4903.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 50 FR 11190, published March 20, 1985, requesting comments on the proposal to assign UHF television Channel 46 to Paris, Illinois, in response to a petition submitted by Pyramid Broadcasting Corporation of Illinois. Supporting comments were filed by the petitioner restating its intention to apply for the channel, if assigned.

2. We believe that the public interest would be served by assigning UHF television Channel 46 to Paris, Illinois, as its first television allocation. The assignment can be made in compliance with the minimum distance separation requirements of § 73.610 of the Rules.

3. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered. That effective November 25, 1985, the Television Table of Assignments, § 73.606(b) of the Commission's Rules, is amended with respect to the community listed below, as follows:

City	Channel No.
Paris, IL	46 +

4. It is further ordered, That this proceeding is terminated.

5. For further information contact: Montrose H. Tyree, Mass Media Bureau, (202) 634-8530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85-25351 Filed 10-23-85; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 84-750; FCC 85-555]

Processing of FM and TV Broadcast Applications

AGENCY: Federal Communications Commission.

ACTION: Reconsideration and Clarification of Final Rule.

SUMMARY: This action denies a petition for partial reconsideration, filed by Mr. Eric Hilding, of the *Report and Order* in MM Docket 84-750. The petitioner requested that the Commission institute a true "first come/first serve" processing system for new FM allocations that are not part of Docket 80-90. Hilding

proposed a method whereby the petitioner requesting the new allocation would be the only participant allowed to file in the window period. However, the Commission determined that, on balance, this alternative does not serve the public interest better than the system adopted in the *Report and Order*. This action also clarifies the operation of the amendment period as delineated in the *Report and Order*.

EFFECTIVE DATE: November 25, 1985.

FOR FURTHER INFORMATION CONTACT: Lane H. Moten, Mass Media Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Memorandum Opinion and Order

In the matter of amendment of §§ 73.3572 and 73.3513 Relating to Processing of FM and TV Broadcast Applications; MM Docket No. 84-750.

Adopted: October 10, 1985.

Released: October 18, 1985.

By the Commission.

1. The Commission has before it a petition for partial reconsideration of its *Report and Order*¹ ("Order") in the above-captioned proceeding filed by Mr. Eric Hilding.² Mr. Hilding requests reconsideration of that portion of the Order which promulgated new processing rules for all future FM channel assignments which are not part of the 689 new channels made possible by our action in Docket 80-90.³ Additionally, our review of the Order and our brief experience with the new processing system since its adoption prompt us to clarify two matters on our own motion.

2. The Commission's adoption of the Order in this proceeding implemented new processing procedures for commercial FM services. The new procedures provided for an initial filing window period for applications for new commercial FM service and for modifications to FM facilities. Applications filed during the window are grouped for consolidated

consideration, with mutually exclusive applications being evaluated in comparative hearings. After a window closes, applications for a vacant allotment and for modifications to facilities affecting such vacant allotments or other existing facilities are processed on a "first come/first serve" basis. This action was taken in an effort to expedite service to the public and to provide increased certainty and efficiency in the applications processing system.

3. Although Mr. Hilding generally supports the new processing system, he maintains that the Commission should have created a true "first come/first serve" system for all new FM allocations that are not part of the Docket 80-90 proceeding. Specifically, Mr. Hilding proposes a system in which the applications of parties which have petitioned to amend the FM Table of Allotments⁴ would not be subject to competing applications during the relevant filing "window." Rather, only the party petitioning for the allotment change would be eligible to file in the window. This approach, it is contended, would reward the initiative, leadership and entrepreneurial spirit of the original petitioner, thus providing an incentive for parties to seek allotment changes and to thereby bring new or expanded service to the public.

4. Clearly, Mr. Hilding's proposal would expedite service in the sense that it would radically reduce applications processing requirements. It would also provide substantial incentives for petitioners seeking allotment changes. In our view, however, it does not accord adequate attention to the full range of policy concerns at issue in devising appropriate processing standards. As we noted in the Order:

The Commission's role in designing an applications processing system is not simply to administer spectrum allocations or to prevent stations from interfering with one another. Rather, the Commission also strives to ensure that an expansive menu of programming alternatives is made rapidly available to the American public. In developing processing guidelines, then, the Commission must strike a balance between the dual and sometimes divergent goals of selecting the best possible applicant and the commitment to bring new service to the public as expeditiously as possible.⁵

We remain persuaded that the "window filing—first come/first serve" processing system strikes this balance properly. In adopting the Order, careful

¹ FCC 85-125 (released May 6, 1985), 50 FR 19836 (May 13, 1985) [hereinafter "Order"].

² Mr. Hilding incorporates by reference in his reconsideration petition a "Petition for Rulemaking to Amend the 1965 Policy on Comparative Broadcast Hearings," which he filed on May 8, 1985. To the extent that his contentions in that filing are relevant to this proceeding, they have been considered herein. In many respects, however, the petition for rulemaking exceeds the scope of the instant proceeding.

³ The First Report and Order in MM Docket No. 84-231, FCC 84-640 (adopted December 19, 1984), added 689 channels to the FM Table, thereby implementing our decision in the *Report and Order* in BC Docket No. 80-90, 94 FCC 2d 152 (1983).

⁴ The FM "Table of Allotments" is found in § 73.202 of the Commission's rules, 47 CFR 73.202.

⁵ Order at ¶ 7.

consideration was given to the probable costs and benefits of the new processing procedures. Mr. Hilding has advanced no new facts nor raised any new arguments that convince us to modify our decision. We continue to believe that the judgment we reached in this proceeding was soundly based on a balanced and full consideration of the relevant facts. We will retain, therefore, the new processing procedures delineated in the *Order*. We turn now to the two issues which require clarification.

5. First, in our effort to make it absolutely clear that, under the new system, amendments may not correct a flaw in the tenderability of an application, we overstated the restriction on amendments generally. The *Order*, in paragraph 31, makes it appear that amendments relating to anything except acceptability or grantability criteria are not allowed. This is not the case. Any minor amendment may be filed during the amendment period, "so long as that amendment does not create a new conflict with an application filed prior to the amendment,"⁶ or relate to the tenderability of the underlying application. Section 73.3522 of the rules is amended herein to reflect this clarification.

6. Second, it may be impractical, in every case, to ensure that all mutually exclusive applicants appear on the same *Notice of Tenderability*⁷ and thereby to ensure synchronized amendment periods for such applicants. For example, in the interest of expeditiously authorizing new service, the Commission will place applications found to be tenderable on *Notices of Tenderability* as soon as possible. This means that applicants whose applications are initially found non-tenderable may file petitions for reconsideration which, if granted, would require reinstatement and subsequent appearance of their applications on a *Notice of Tenderability*. This in turn would generate a new amendment period for such applications. Rather than withhold all tenderable applications from appearing on a *Public Notice* until the disposition of initially non-tenderable applications has become final, we will continue to place tenderable applications on *Public Notice* promptly. In the interest of

fairness to all applicants, however, whenever the Commission reinstates an application, or for any other reason subjects a mutually exclusive application to a late amendment period, all applicants mutually exclusive with that application will be afforded the opportunity to file during the later amendment period.

7. Accordingly, it is ordered, That the petition for reconsideration of the *Report and Order* in MM Docket 84-750, filed by Mr. Eric Hilding, is denied.

8. It is further ordered, That the Commission's Rules are amended, effective November 25, 1985, as set forth in the attached Appendix.

9. For further information concerning this proceeding contact Lane Howard Moten, Mass Media Bureau, (202) 632-7792.

Federal Communications Commission.
William J. Tricarico,
Secretary.

Appendix

PART 73—[AMENDED]

47 CFR Part 73 is amended as follows:

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154 and 303.

2. 47 CFR 73.3522 is amended by revising paragraph (a)(6) to read as follows:

§ 73.3522 Amendment of applications.

(a) * * *

(6) Subject to the provisions of §§ 73.3525, 73.3573, and 73.3580, applications for non-reserved band FM stations (other than Class D stations) may be amended as a matter of right during the appropriate window filing period pursuant to § 73.3564(d). For a period of 30 days following the FCC's issuance of a Public Notice announcing the acceptance of the application for tender, minor amendments may be filed as a matter of right; provided, however, that such amendments may not correct deficiencies in the tenderability of the underlying application. Subsequent amendments prior to designation for hearing or grant will be considered only upon a showing of good cause for late filing or pursuant to § 1.65 or § 73.3514. Unauthorized or untimely amendments are subject to return by the Commission without consideration. However, an amendment to a non-reserved band application will not be accepted after the close of the appropriate filing window if the effect of such amendment is to alter the proposed facility's coverage area so as to produce a

conflict with an applicant who files subsequent to the initial applicant, but prior to the amendment application. Similarly, an applicant subject to "first come/first serve" processing will not be permitted to amend its application and retain filing priority if the result of such amendment is to alter the facility's coverage area so as to produce a conflict with an applicant who files subsequent to the initial applicant but prior to the amendment.

[FR Doc. 85-25355 filed 10-23-85; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

48 CFR Parts 214, 215, 227 and 252

Department of Defense Federal Acquisition Regulation Supplement; Technical Data

AGENCY: Department of Defense (DoD).

ACTION: Interim rule.

SUMMARY: The DAR Council has issued an interim rule based upon modification of existing DFARS coverage to incorporate the specific requirements of Pub. L. 98-525 and Pub. L. 98-577. This action is necessary to comply with the statutory implementation date of October 18, 1985. The intended effect of this coverage is to put into being a technical data policy that meets the minimum requirements of the Public Laws mentioned above until such time as public comments on the proposed rule have been received and evaluated.

DATES: Effective October 18, 1985.

Comments must be received on or before January 9, 1986.

ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, ODASD(P)/DARS, c/o OUSDRE(M&RS), Room 3D139, The Pentagon, Washington, D.C. 20301-3062.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, (202) 697-7268.

SUPPLEMENTARY INFORMATION: On September 10, 1985, the DAR Council published a proposed rule (50 FR 36887 of September 10, 1985), implementing portions of the Technical Data sections of Pub. L. 98-525, the Defense Procurement Reform Act of 1984, and Pub. L. 98-577, the Small Business and Federal Procurement Competition Enhancement Act. A 30-day public comment period was provided in the

⁶ *Order* at §31.

⁷ FM broadcast applications found tenderable pursuant to the criteria adopted in our *Order* appear on a Commission Public Notice under the heading "FM Broadcast Applications Tendered for Filing." This constitutes the *Notice of Tenderability* for the listed applications.

notice. The initial reaction from the public was that the comment period was too short. A public meeting was held on October 1, 1985, to discuss the comment period and initial industry views of the coverage. The DAR Council had also distributed a proposed rule regarding validation of restrictive markings on technical data on September 25, 1985 through its standard mailing list. This proposed rule was also discussed at the public meeting. Over 40 representatives of industry, Congressional staffs, the press, and the government attended the public meeting. The consensus was that the public comment period should be extended by at least 90 days.

A major topic of discussion at the public meeting was the action necessary by the DAR Council to comply with the statutory implementation date of October 18, 1985. In order to comply with the statutory date, the DAR Council had to either issue an interim rule or a final rule by October 18, 1985. In view of the public's desire to extend the comment period, a final rule was considered inappropriate by the attendees. The alternative forms of an interim rule were discussed. The alternatives considered were an interim rule based on the proposed rule and an interim rule based on a rewrite of existing DFARS coverage. Some commenters urged that no interim rule be issued, and others advocated using the proposed rule as the basis for an interim rule. The consensus, however, was that due to the extensive reorganization and rewrite of the DFARS dictated by the proposed rule, it would not be appropriate to issue that as an interim rule without additional public comment and there was insufficient time to receive and consider such public comment.

As a result of the public meeting, and all of the public comments received to date, the DAR Council had decided to extend the public comment period on the proposed rule by 90 days. The public comment period, as extended, will now end on January 9, 1986. (50 FR 41180, October 9, 1985.) The DAR Council has also finalized an interim rule based upon a modification of existing DFARS coverage to incorporate the specific requirements of Pub. L. 98-525 and Pub. L. 98-577. The issuance of this interim rule is not intended to generate comments. However, any comments received on or before January 9, 1986, concerning this interim rule, will be considered during the formulation of the final rule.

The major changes are as follows:

a. A requirement for contracting officers to consider requiring alternate proposals giving the United States the

right to use technical data to be provided under the contract for competitive procurement and alternate proposals for qualification or development of multiple sources of supply.

b. A requirement to identify, to the maximum practicable extent in advance of delivery, technical data which is to be delivered with restrictions on the right of the United States to use such data.

c. A requirement that the contractor revise any technical data delivered under the contract to reflect engineering design changes made during the performance of the contract and affecting the form, fit, and function of the items specified in the contract and to deliver such revised technical data to an agency within a time specified in the contract.

d. A requirement that the contractor certify at the time technical data is delivered or is made available that the technical data is complete and accurate and satisfies the requirements of the contract.

e. A limitation of 7 years on negotiation objectives on the maximum period of time for expiration of restrictions on the United States rights to use technical data when such provisions are to be included in a contract.

f. Revised procedures for validation of restrictive markings.

g. Policies and procedures regarding persons who have developed products or processes offered or to be offered for sale to the public being required as a condition for the procurement of such products or processes by the Department of Defense, to provide to the United States technical data relating to the design, development or manufacture of such products or processes.

A. Background

The DoD FAR Supplement is codified in Chapter 2, Title 48 of the Code of Federal Regulations.

The October 1, 1984 revision of the CFR is the most recent edition of that title. It reflects amendments to the 1984 edition of the DoD FAR Supplement made by Defense Acquisition Circulars 84-1 through 84-3.

B. Determination to Issue a Temporary Regulation

A determination has been made under the authority of the Secretary of Defense that these regulations must be issued as temporary regulations in compliance with section 22 of the Office of Federal Procurement Policy Act, as amended.

C. Regulatory Flexibility Act Information

The changes appear not to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) because the coverage is the minimum necessary to implement the requirements of Pub. L. 98-525 and Pub. L. 98-577.

D. Paperwork Reduction Act Information

The rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

Interim Changes to 48 CFR Parts 214, 215, 227 and 252

The Department of Defense has issued interim changes to the DoD FAR Supplement to implement portions of the Technical Data sections of Pub. L. 98-525 and Pub. L. 98-577.

List of Subjects in 48 CFR Parts 214, 215, 227 and 252

Government procurement.
Charles W. Lloyd,
Executive Secretary, Defense Acquisition Regulatory Council.

Adoption of Amendments

Therefore, the DoD FAR Supplement, contained in 48 CFR Parts 214, 215, 227 and 252, is amended as set forth below.

1. The authority citation for 48 CFR Parts 214, 215, 227 and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 214—SEALED BIDDING

2. Section 214.201 is amended by removing the text of the section: "Reserved, pending determination to what extent guidance may be necessary." The section heading is retained as set forth below.

3. Section 214.201-2 is added to read as follows:

214.201 Preparation of invitation for bids.

214.201-2 Part I—The schedule.

When a DD Form 1423 is used to list technical data which is to be delivered under the contract in accordance with 227.410-6(c), it shall be designated as an exhibit and established, as such, in accordance with 204.7105.

PART 215—CONTRACTING BY NEGOTIATION

4. Section 215.406 is amended by removing the text of the section: "Reserved, pending determination to what extent guidance may be necessary." The section heading is retained as set forth below.

5. Section 215.406-2 is added to read as follows:

215.406 Preparing requests for proposals (RFP's) and requests for quotations (RFQ's).

215.406-2 Part I—The schedule.

When a DD Form 1423 is used to list technical data which is to be delivered under the contract in accordance with 227.410-8(c), it shall be designated as an exhibit and established, as such, in accordance with 204.7105.

PART 227—PATENTS, DATA AND COPYRIGHTS

6. Section 227.403-2 is amended by adding paragraph (3) to paragraph (a); by adding paragraph (3) to paragraph (c); and by adding paragraphs (h) and (i) to read as follows:

227.403-2 Policy.

(a) General.

(3)(i) Consistent with section 2320(a) of title 10, U.S.C., the contracting officer shall not require an offeror, as a condition for obtaining a contract, to provide technical data pertaining to the design, development, or manufacture of products or processes developed at private expense and offered or to be offered for sale, license, or lease to the public unless such data is necessary for the Government to operate or maintain the product or use the process if obtained as an element of performance under a contract: *Provided*, however, that when an agency head, on a nondelegable basis, determines, with respect to specific components, that the interest of the United States in increasing competition and lowering costs by developing and locating alternative sources of supply and manufacture for the specific components is best served by obtaining such data, the contracting officer may then require such data and rights as necessary.

(ii) Absent an agency head determination, contracting officers may still negotiate to obtain such technical data with the right to disclose and use it whenever acquisition of the technical data would be advantageous to the Government. Likewise, an offeror's willingness to provide this technical data, along with appropriate rights, may

be evaluated as part of a source selection.

(c) Limited rights technical data.

(3) When a period is to be established in a contract, after which restrictive markings on technical data to be delivered under the contract shall cease to be effective and unlimited rights apply, the negotiation object for such period shall not exceed 7 years in accordance with 10 U.S.C. 2320(c).

(h) Alternative proposals for enhancement of competition. Contracting officers shall consider use of solicitation provisions to obtain alternate proposals from contractors that provide the United States the right to use limited rights technical data for competitive repurchase or that otherwise provide for the establishment of alternate sources of supply.

(i) Identification of limited rights in technical data and restricted rights in computer software before delivery.

(1) *Prenotification of rights in technical data and computer software.* In order for the Government to make informed judgments concerning the repurchase potential of items, components, processes, or computer software developed at private expense that an offeror intends to deliver under a resultant contract, offerors shall identify to the maximum practicable extent in their responses to solicitations such privately developed items, components, processes, or computer software and the technical data pertaining thereto which they:

- (i) Intend to deliver with limited rights;
- (ii) Intend to deliver with unlimited rights; or
- (iii) Have not yet determined will be delivered with unlimited or limited rights.

If delivery of technical data under a resultant contract is expected, the provision at 252.227-7035, Prenotification of Rights in Technical Data, shall be included in the solicitation. If an offeror asserts limited rights to any technical data in its proposal in responding to this requirement, Government failure to object to or reject any such assertion shall not be construed to constitute agreement to any such data rights assertion. Offerors will furnish, at the written request of the contracting officer, evidence supporting any such rights contention when the criteria governing rights in technical data, as set forth in the clause at 252.227-7013, are applied.

(2) Notice of certain limited rights. When the provision at 252.227-7035, Prenotification of Rights in Technical Data, is included in a solicitation, Alternate I to the clause at 252.227-7013, Rights in Technical Data and Computer Software, shall be included in any resultant contract. Alternate I shall be modified so as not to require notice for that data with respect to which the contractor has already given notice of intention to deliver with unlimited or limited rights in carrying out the solicitation provision at 252.227-7035, Prenotification of Rights in Technical Data, and to require the contractor to furnish, within 60 days after a written request of the contracting officer is received, evidence supporting any such rights contention when the criteria governing rights in technical data, as set forth in the clause at 252.227-7013, are applied.

(3) The notification received under (i) (1) and (2) above will inform the contracting officer of the rights the Government should expect in technical data when it is delivered and afford the opportunity to consider taking steps before delivery of the data to remove inhibitions on competitive acquisitions stemming from inability to disclose technical data to the general public.

7. Section 227.410-2 is amended by designating the existing undesignated paragraph as paragraph (a); and by adding paragraph (b) to read as follows:

227.410-2 Requirement for technical data certification.

(b) If technical data is required to be delivered under a contract, the clause at 252.227-7036, Certification of Technical Data Conformity, shall be included in solicitations and any resultant contract.

(1) The clause requires the contractor to certify in writing that, to the best of its knowledge and belief, technical data delivered under the contract is complete, accurate, and complies with all requirements of the contract. The clause states that technical data deliverable under the contract may be reviewed by the Government both before and after Government acceptance. The clause also contains some illustrative examples of such reviews.

227.410-6 [Amended]

8. Section 227.410-6 is amended by adding after the first sentence of paragraph (c), a sentence to read: "Therefore, unless excepted in this subparagraph, all technical data to be delivered under a contract shall be listed on, and its delivery schedule

indicated on, the DD Form 1423 incorporated in the contract."

9. Section 227.412 is amended by adding at the end, paragraphs (v), (w), and (x) to read as follows:

227.412 Solicitation provisions and contracts clauses.

(v) The contracting officer may insert the provision at 252.227-7035, Prenotification of Rights in Technical Data, in solicitations in accordance with 227.403-2(i).

(w) The contracting officer shall insert the clause at 252.227-7036, Certification of Technical Data Conformity, in all contracts in accordance with 227.410-2(b).

(x) The contracting officer shall insert the clause at 252.227-7037, Validation of Restrictive Markings on Technical Data, in solicitations and contracts which require the delivery of technical data.

10. Sections 227.413, 227.413-1, 227.414, and 227.415 are added to read as follows:

227.413 Validation of restrictive markings on technical data.

227.413-1 Policy and procedures.

(a) *General.* 10 U.S.C. 2321 sets forth rights and procedures pertaining to the validation of restrictive markings asserted by contractors subcontractors on the use, duplication, or disclosure by the Government and others of technical data required to be delivered under contracts or subcontracts for supplies or services. 10 U.S.C. 2320 provides authority for the Department of Defense to establish remedies when data delivered or made available under a contract is found to not satisfy the requirements of the contract (e.g., contains improper or unauthorized restrictive legends). Whenever the contracting officer finds it appropriate to question the validity of restrictive markings on data provided by contractors or subcontractors, the contracting officer shall follow the procedures set forth below. The contractor or subcontractor at any tier must maintain records adequate to justify the validity of markings that impose restrictions on the right of the Government and others to use, duplicate, or disclose technical data delivered or required to be delivered under the contract or subcontract and shall be prepared to furnish to the contracting officer a written justification for such restrictive markings. The records that justify the validity of the restrictive markings shall be maintained for as long as the contractor or subcontractor intends to assert the validity of the markings.

(b) *Prechallenge review.* (1) The contracting officer may request the contractor or subcontractor to furnish to the contracting officer a written justification for any restriction asserted by the contractor or subcontractor on the right of the United States or others to use technical data. The contractor or subcontractor shall furnish such written justification to the contracting officer within 30 days after receipt of a written request or within such longer period as may be authorized in writing by the contracting officer. If the contracting officer receives advice that the validity of restrictive markings on technical data is questionable, the contracting officer shall request that the individual raising the question provide written rationale for the assertion. The contracting officer should also request information and advice from the cognizant Government activity having control of the data on the validity of the markings.

(2) If the contracting officer, after reviewing the written justification furnished pursuant to (b)(1) above and any other available information pertaining to the validity of a restrictive marking, determines that reasonable grounds exist to question the current validity of the marking and that continued adherence to the marking would make impracticable the subsequent competitive acquisition of the item, component or process to which the marked technical data relates, the contracting officer shall review the validity of the marking.

(3) As a part of the review, the contracting officer may request the contractor or subcontractor to furnish information in the records or otherwise in the possession of or available to the contractor or subcontractor to justify the validity of any restrictive marking on technical data delivered or required to be delivered under the contract or subcontract. The contracting officer may request the contractor or subcontractor to furnish additional information such as a statement of facts accompanied by supporting documentation adequate to justify the validity of the marking. The contractor or subcontractor shall furnish such information to the contracting officer within 30 days after receipt of a written request or within such longer period as may be authorized in writing by the contracting officer. If the contractor or subcontractor fails to provide the requested information, within 30 days after receipt of the contracting officer's written request or within such longer period as may be authorized in writing by the contracting officer, the contracting officer shall proceed in accordance with (c) of this section.

(c) *Challenge.* (1) If after completion of the prechallenge review the contracting officer determines that a challenge to the restrictive marking is warranted, the contracting officer shall send a written challenge notice to the contractor or subcontractor. Such notice shall include (i) the grounds for challenging the restrictive marking, (ii) a requirement for a written response within 60 days after receipt of the written notice justifying by clear and convincing evidence the current validity of the restrictive marking, (iii) a notice that a response will be considered a claim within the meaning of the Contract Disputes Act of 1978 and must be certified in the form prescribed in FAR 33.207, regardless of dollar amount, and (iv) a notice that failure to respond to the challenge notice will constitute agreement by the contractor or subcontractor with Government acting to strike or ignore the restrictive legends.

(2) The contracting officer shall extend the time for response as appropriate if the contractor or subcontractor submits a written request showing the need for additional time to prepare a response.

(3) Any written response from the contractor or subcontractor shall be considered a claim within the meaning of the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.), and must be certified in the form prescribed by FAR 33.207, regardless of dollar amount.

(4) If a contractor or subcontractor has received challenges to the same restrictive markings from more than one contracting officer, the contractor or subcontractor is to notify each contracting officer of the existence of more than one challenge. This notice shall also indicate which unanswered challenge was received first in time by the contractor or subcontractor. The contracting officer who initiated the first in time unanswered challenge is the contracting officer who will take the lead in establishing a schedule for the resolution of the challenges to the restrictive markings. This contracting officer shall coordinate with all the other contracting officers, formulate a schedule for responding to each of the challenge notices, and distribute such schedule to all interested parties. The schedule shall provide to the contractor or subcontractor a reasonable opportunity to respond to each challenge notice. All parties must agree to be bound by this schedule.

(d) *Final decision.*—(1) *Final decision when contractor fails to respond.* If the contractor or subcontractor fails to respond to the challenge notice, the

contracting officer will then issue a final decision that the restrictive markings are not valid and that the Government will either strike or ignore the invalid restrictive markings. The failure of the contractor or subcontractor to respond to the challenge notice constitutes agreement with the Government action to strike or ignore the restrictive legends. The final decision shall be issued as a final decision under the Disputes clause at FAR 52.233-1. This final decision is to be issued within 60 days after the expiration of the time period of (c) (1)(ii) or (2) above. Following the issuance of the final decision, the contracting officer may then strike or ignore the invalid restrictive markings.

(2) *Final decision when contractor or subcontractor responds.* (i) If, after reviewing the response from the contractor or subcontractor, the contracting officer determines that the contractor or subcontractor has justified the validity of the restrictive marking, the contracting officer shall issue a final decision to the contractor or subcontractor sustaining the validity of the restrictive marking, and stating that the Government will continue to be bound by the restrictive markings. The final decision shall be issued within 60 days after receipt of the contractor's or subcontractor's response to the challenge notice, or within such longer period that the contracting officer has notified the contractor or subcontractor of the longer period that the Government will require. The notification of a longer period for issuance of a final decision will be made within 60 days after receipt of the response to the challenge notice.

(ii)(A) If, after reviewing the response from the contractor or subcontractor, the contracting officer determines that the validity of the restrictive marking is not justified, the contracting officer shall issue a final decision to the contractor or subcontractor in accordance with the Disputes clause at FAR 52.233-1. Notwithstanding paragraph (e) of the Disputes clause, the final decision shall be issued within 60 days after receipt of the contractor's or subcontractor's response to the challenge notice, or within such longer period that the contracting officer has notified the contractor or subcontractor of the longer period that the Government will require. The notification of a longer period for issuance of a final decision will be made within 60 days after receipt of the response to the challenge notice. Such a final decision shall advise the contractor or subcontractor of the rights of appeal under the Contract Disputes Act.

(B) The Government will continue to be bound by the restrictive marking for a period of 90 days from the issuance of the contracting officer's final decision under (d)(2)(ii)(A) of this section. The contractor or subcontractor, if it intends to file suit in the United States Claims Court, must provide a notice of intent to file suit to the contracting officer within 90 days from the issuance of the contracting officer's final decision under (d)(2)(ii)(A) of this section. If the contractor or subcontractor fails to appeal, file suit, or provide a notice of intent to file suit to the contracting officer within the 90-day period, the Government may cancel or ignore the restrictive markings, and the failure of the contractor or subcontractor to take the required action constitutes agreement with such Government action.

(C) The Government will continue to be bound by the restrictive marking where a notice of intent to file suit in the United States Claims Court is provided to the contracting officer within 90 days from the issuance of the final decision under (d)(2)(ii)(A) of this section. The Government will no longer be bound and may strike or ignore the restrictive markings if the contractor or subcontractor fails to file its suit within one year after issuance of the final decision. Notwithstanding the foregoing, where the head of an agency determines, on a nondelegable basis, that urgent or compelling circumstances significantly affecting the interest of the United States will not permit waiting for the filing of a suit in the United States Claims Court, the agency may, following notice to the contractor or subcontractor, cancel and ignore such restrictive markings as an interim measure pending filing of the suit or expiration of the one-year period without filing of the suit. However, such agency head determination does not affect the contractor's or subcontractor's right to damages against the United States where its restrictive markings are ultimately upheld or to pursue other relief, if any, as may be provided by law.

(D) The Government will be bound by the restrictive marking where an appeal or suit is filed pursuant to the Contract Disputes Act until final disposition by an agency Board of Contract Appeals or the United States Claims Court. Notwithstanding the foregoing, where the head of an agency determines, on a nondelegable basis, that (1) the contractor has failed to diligently prosecute its appeal; or (2) that urgent or compelling circumstances significantly affecting the interest of the United

States will not permit awaiting the decision by such Board of Contract Appeals or the United States Claims Court, the agency may, following notice to the contractor or subcontractor, cancel and ignore such restrictive markings as an interim measure pending final adjudication. However, such agency head determination does not affect the contractor's or subcontractor's right to damages against the United States where its restrictive markings are ultimately upheld or to pursue other relief, if any, as may be provided by law.

(e) *Appeal or suit.* (1) If the contractor or subcontractor appeals or files suit and if upon final disposition the contracting officer's decision is sustained, the restrictive markings on the technical data shall be canceled, corrected, or ignored. If upon final disposition it is found that the restrictive marking was not substantially justified, the contracting officer shall determine the cost to the Government of reviewing the restrictive markings and the fees and other expenses incurred by the Government in challenging the marking. The contractor is then liable to the Government for payment of these costs unless the contracting officer determines that special circumstances would make such payment unjust.

(2) If the contractor or subcontractor appeals or files suit and if upon final disposition the contracting officer's decision is not sustained, the Government shall continue to be bound by the restrictive markings. Additionally, if the challenge by the Government is found not to have been made in good faith, the Government shall be liable to the contractor or subcontractor for payment of fees or other expenses incurred by the contractor or subcontractor in defending the validity of the marking.

(f) *Survival or right to challenge.* The Government's right to challenge the validity of a restrictive marking is without limitation as to time and without regard as to final payment under the contract under which the data was delivered. However, if the contracting officer issues a decision sustaining the validity of a restrictive marking, the validity of such restrictive marking shall not again be challenged unless additional evidence not originally available to the contracting officer becomes available that would indicate the restrictive marking is invalid.

(g) *Privity of contract.* These procedures for reviewing the validity of restrictive markings on technical data do not create or imply a privity of

contract between the Government and subcontractors.

227.414 Remedies for noncomplying technical data.

(a) The Government may suffer injury when data required to be delivered or made available under a contract is incomplete, inadequate, or fails to satisfy established requirements. The contracting officer shall consider all available remedies to the Government including, but not limited to, reduction of progress payments, withholding, termination, and decrease in contract price or fee. The contracting officer shall consult with counsel, as appropriate, to foster selection of a suitable remedy.

227.415 Technical data reflecting engineering changes.

A DD Form 1423 shall be included in contracts which shall require delivery of suitable revisions to technical data provided under that or a predecessor contract which are needed to portray and take into account engineering changes ordered under that contract that affect form, fit, and function of items specified in the contract. A delivery schedule shall be indicated in the contract for the revisions. Such revisions need not be provided for, however, if the contracting officer determines that there is no requirement justifying their purchase.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

11. Section 252.227-7013 is amended by revising paragraph (d) of the clause to read as follows:

252.227-7013 Rights in technical data and computer software.

(d) Removal of unauthorized markings.

(1) Notwithstanding any provision of this contract concerning inspection and acceptance, the Government may correct, cancel, or ignore any marking not authorized by the terms of this contract on any technical data furnished hereunder in accordance with the clause of this contract entitled "Validation of Restrictive Markings on Technical Data".

(2) Notwithstanding any provision of this contract concerning inspection and acceptance, the Government may correct, cancel, or ignore any marking not authorized by the terms of this contract on any computer software furnished hereunder, if:

(i) The Contractor fails to respond within sixty (60) days to a written inquiry by the Government concerning the propriety of the markings; or

(ii) The Contractor's response fails to substantiate, within sixty (60) days after written notice, the propriety of restricted

rights markings by identification of the restrictions set forth in the contract.

In either case, the Government shall give written notice to the Contractor of the action taken.

12. Section 252.227-7025 is amended by revising paragraph (d) of the clause to read as follows:

252.227-7025 Rights in technical data and computer software (SBIR program).

(d) Removal of unauthorized markings. (1) Notwithstanding any provision of this contract concerning inspection and acceptance, the Government may correct, cancel, or ignore any marking not authorized by the terms of this contract on any technical data furnished hereunder in accordance with the clause of this contract entitled "Validation of Restrictive Markings on Technical Data".

(2) Notwithstanding any provision of this contract concerning inspection and acceptance, the Government may correct, cancel, or ignore any marking not authorized by the terms of this contract on any computer software furnished hereunder, if:

(i) The Contractor fails to respond within sixty (60) days to a written inquiry by the Government concerning the propriety of the markings; or

(ii) The Contractor's response fails to substantiate, within sixty (60) days after written notice, the propriety of restricted rights markings by identification of the restrictions set forth in the contract.

In either case, the Government shall give written notice to the Contractor of the action taken.

13. Sections 252.227-7035, 252.227-7036, and 252.227-7037 are added to read as follows:

252.227-7035 Prenotification of rights in technical data.

As prescribed at 227.412(v), insert the following provisions:

PRENOTIFICATION OF RIGHTS IN TECHNICAL DATA (OCT 1985)

(a) In order for the Government to make informed judgments concerning the procurement potential of items, components, processes, or computer software developed at private expense that an Offeror intends to deliver under a resultant contract, offerors shall identify to the maximum practicable extent in their response to this solicitation such privately developed items, components, processes, or computer software and the technical data pertaining thereto which they:

- (1) Intend to deliver with limited rights;
- (2) Intend to deliver with unlimited rights;

or

(3) Have not yet determined will be delivered with unlimited or limited rights.

This requirement for identification shall include that technical data pertaining to the design, development, or production of privately developed items, components, or

processes which have been or are to be offered for sale, lease or license in significant quantities to the general public. This identification need not be made as to technical data which relates to standard commercial items which are manufactured by more than one source of supply.

(b) If an Offeror asserts limited rights to any technical data in its proposal in responding to this requirement, Government failure to object to or reject any such assertion shall not be construed to constitute an agreement to or impair Government rights with respect to any such data rights assertion.

(c) Offerors will furnish, at the written request of the Contracting Officer, evidence supporting any such rights contention when the criteria governing rights in technical data, as set forth in the clause at 252.227-7013, are applied.

(End of provision)

252.227-7036 Certification of technical data conformity.

As prescribed at 227.412(w), insert the following clause:

CERTIFICATION OF TECHNICAL DATA CONFORMITY (OCT 1985)

(a) All technical data delivered under this contract shall be accompanied by the following written certification:

The Contractor, _____, hereby certifies that, to the best of its knowledge and belief, the technical data delivered herewith under Contract No. _____ is complete, accurate, and complies with all requirements of the contract.

Date _____
Name and Title of Certifying Official _____

This written certification shall be dated and the certifying official (identified by name and title) shall be duly authorized to bind the Contractor by the certification.

(b) The Contractor shall identify, by name and title, each individual (official) authorized by the Contractor to certify in writing that the technical data is complete, accurate, and complies with all requirements of the contract. The Contractor hereby authorizes direct contact with the authorized individual responsible for certification of technical data. The authorized individual shall be familiar with the Contractor's technical data conformity procedures and their application to the technical data to be certified and delivered.

(c) Technical data delivered under this contract may be subject to reviews by the Government during preparation and prior to acceptance. Technical data is also subject to reviews by the Government subsequent to acceptance. Such reviews may be conducted as a function ancillary to other reviews, such as in-process reviews or configuration audit reviews.

(End of clause)

252.227-7037 Validation of restrictive markings on technical data.

As prescribed in 227.412(x), insert the following clause:

VALIDATION OF RESTRICTIVE MARKINGS ON TECHNICAL DATA (OCT 1985)

(a) *Definition.* "Technical data", as used in this clause, means recorded information (regardless of the form or method of the recording) of a scientific or technical nature (including computer software documentation) relating to supplies acquired or to be acquired by the Government. Such term does not include computer software or financial, administrative, cost or pricing, or management data, or other information incidental to contract administration.

(b) *Justification.* The Contractor or subcontractor at any tier shall maintain records adequate to justify the validity of markings that impose restrictions on the Government and others to use, duplicate, or disclose technical data delivered or required to be delivered under the contract or subcontract, and shall be prepared to furnish to the Contracting Officer a written justification for such restrictive markings. The records that justify the validity of the restrictive markings shall be maintained for as long as the Contractor or subcontractor intends to assert the validity of the markings.

(c) *Prechallenge review.* (1) The Contracting Officer may request the Contractor or subcontractor to furnish to the Contracting Officer a written justification for any restriction asserted by the Contractor or subcontractor on the right of the United States or others to use technical data. The Contractor or subcontractor shall furnish such written justification to the Contracting Officer within thirty (30) days after receipt of a written request or within such longer period as may be authorized in writing by the Contracting Officer.

(2) If the Contracting Officer, after reviewing the written justification furnished pursuant to (b)(1) of this clause and any other available information pertaining to the validity of a restrictive marking, determines that reasonable grounds exist to question the current validity of the marking and that continued adherence to the marking would make impracticable the subsequent competitive acquisition of the item, component, or process to which the marked technical data relates, the Contracting Officer may review the validity of the marking.

(3) As a part of the review, the Contracting Officer may request the Contractor or subcontractor to furnish information in the records or otherwise in the possession of or available to the Contractor or subcontractor to justify the validity of any restrictive marking on technical data delivered or required to be delivered under the contract or subcontract. The Contracting Officer may request the Contractor or subcontractor to furnish additional information such as a statement of facts accompanied by supporting documentation adequate to justify the validity of the marking. The Contractor or subcontractor shall furnish such information to the Contracting Officer within thirty (30) days after receipt of a written request or within such longer period as may be authorized in writing by the Contracting Officer.

(d) *Challenge.* (1) Notwithstanding any provision of this contract concerning inspection and acceptance, if, after

completing a prechallenge review, the Contracting Officer determines that a challenge to the restrictive marking is warranted, the Contracting Officer shall send a written challenge notice to the Contractor or subcontractor. Such challenge shall include (i) the grounds for challenging the restrictive marking; (ii) a requirement for a written response within sixty (60) days after receipt of the written notice justifying by clear and convincing evidence the current validity of the restrictive marking; (iii) a notice that a response will be considered a claim within the meaning of the Contract Disputes Act of 1978 and must be certified in the form prescribed in Federal Acquisition Regulation (FAR) 33.207, regardless of dollar amount; and (iv) a notice that failure to respond to the challenge notice will constitute agreement by the Contractor or subcontractor with Government action to strike or ignore the restrictive legends.

(2) The Contracting Officer shall extend the time for response as appropriate if the Contractor or subcontractor submits a written request showing the need for additional time to prepare a response.

(3) The Contractor's or subcontractor's written response shall be considered a claim within the meaning of the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.), and shall be certified in the form prescribed by FAR 33.207, regardless of dollar amount.

(4) A Contractor or subcontractor receiving challenges to the same restrictive markings from more than one Contracting Officer shall notify each Contracting Officer of the existence of more than one challenge. The notice shall also state which Contracting Officer initiated the first in time unanswered challenge. The Contracting Officer initiating the first in time unanswered challenge after consultation with the Contractor or subcontractor and the other Contracting Officers, shall formulate and distribute to all interested parties a schedule for responding to each of the challenged notices. The schedule shall afford the Contractor or subcontractor an equitable opportunity to respond to each challenge notice. All parties agree to be bound by this schedule.

(e) *Final decision when contractor or subcontractor fails to respond.* Upon a failure of a Contractor or subcontractor to submit any response to the challenge notice, the Contracting Officer shall issue a final decision to the Contractor or subcontractor in accordance with the Disputes clause at FAR 52.233-1, pertaining to the validity of the asserted restriction. The Contractor or subcontractor hereby agrees that failure to respond to the challenge notice within the time period of (d)(1)(ii) or (2) above, entitles the Government to cancel, correct, or ignore the restrictive markings and constitutes agreement with such Government action. This final decision shall be issued within sixty (60) days after the expiration of the time period of (d)(1)(ii) or (2) above.

(f) *Final decision when contractor or subcontractor responds.* (1) If the Contracting Officer determines that the Contractor or subcontractor has justified the validity of the restrictive marking, the Contracting Officer shall issue a final decision to the Contractor or subcontractor sustaining the validity of the

restrictive marking, and stating that the Government will continue to be bound by the restrictive marking. The final decision shall be issued within sixty (60) days after receipt of the Contractor's or subcontractor's response to the challenge notice, or within such longer period that the Contracting Officer has notified the Contractor or subcontractor of the longer period that the Government will require. The notification of a longer period for issuance of a final decision will be made within sixty (60) days after receipt of the response to the challenge notice.

(2)(i) If the Contracting Officer determines that the validity of the restrictive marking is not justified, the Contracting Officer shall issue a final decision to the Contractor or subcontractor in accordance with the Disputes clause at FAR 52.233-1. Notwithstanding paragraph (e) of the Disputes clause, the final decision shall be issued within sixty (60) days after receipt of the Contractor's or subcontractor's response to the challenge notice, or within such longer period that the Contracting Officer has notified the Contractor or subcontractor of the longer period that the Government will require. The notification of a longer period for issuance of a final decision will be made within sixty (60) days after receipt of the response to the challenge notice.

(ii) The Government agrees that it will continue to be bound by the restrictive marking for a period of ninety (90) days from the issuance of the Contracting Officer's final decision under (f)(2)(i) of this clause. The Contractor or subcontractor agrees that, if it intends to file suit in the United States Claims Court it will provide a notice of intent to file suit to the Contracting Officer within ninety (90) days from the issuance of the Contracting Officer's final decision under (f)(2)(i) of this clause. If the Contractor or subcontractor fails to appeal, file suit, or provide the ninety (90)-day period, the Government may cancel or ignore the restrictive markings, and the failure of the Contractor or subcontractor to take the required action constitutes agreement with such Government action.

(iii) The Government agrees that it will continue to be bound by the restrictive marking where a notice of intent to file suit in the United States Claims Court is provided to the Contracting Officer within ninety (90) days from the issuance of the final decision under (f)(2)(i) of this clause. The Government will no longer be bound, and the Contractor or subcontractor agrees that the Government may strike or ignore the restrictive markings if the Contractor or subcontractor fails to file its suit within one (1) year after issuance of the final decision. Notwithstanding the foregoing, where the head of an agency determines, on a nondelegable basis, that urgent or compelling circumstances significantly affecting the interest of the United States will not permit waiting for the filing of a suit in the United States Claims Court, the Contractor or subcontractor agrees that the agency may, following notice to the Contractor or subcontractor, cancel and ignore such restrictive markings as an interim measure, pending, filing of the suit or

expiration of the one (1)-year period without filing of the suit. However, such agency head determination does not affect the Contractor's or subcontractor's right to damages against the United States where its restrictive markings are ultimately upheld or to pursue other relief, if any, as may be provided by law.

(iv) The Government agrees that it will be bound by the restrictive marking where an appeal or suit is filed pursuant to the Contract Disputes Act until final disposition by an agency Board of Contract Appeals or the United States Claims Court. Notwithstanding the foregoing, where the head of an agency determines, on a nondelegable basis, following notice to the Contractor that (A) the Contractor has failed to diligently prosecute its appeal, or (B) that urgent or compelling circumstances significantly affecting the interest of the United States will not permit awaiting the decision by such Board of Contract Appeals or the United States Claims Court, the Contractor or subcontractor agrees that the agency may cancel and ignore such restrictive markings as an interim measure pending final adjudication. However, such agency head determination does not affect the Contractor's or subcontractor's right to damages against the United States where its restrictive markings are ultimately upheld or to pursue other relief, if any, as may be provided by law.

(g) *Final disposition of appeal or suit.*

(1) If the Contractor or subcontractor appeals or files suit and if, upon final disposition of the appeal or suit, the Contracting Officer's decision is sustained—

(i) The restrictive marking on the technical data shall be canceled, corrected, or ignored; and

(ii) If the restrictive marking is found not to be substantially justified, the Contractor or subcontractor, as appropriate, shall be liable to the Government for payment of the cost to the Government of reviewing the restrictive marking and the fees and other expenses (as defined in 28 U.S.C. 2412(d)(2)(A)) incurred by the Government in challenging the marking, unless special circumstances would make such payment unjust.

(2) If the Contractor or subcontractor appeals or files suit and if, upon final disposition of the appeal or suit, the Contracting Officer's decision is not sustained—

(i) The Government shall continue to be bound by the restrictive marking; and

(ii) The Government shall be liable to the Contractor or subcontractor for payment of fees and other expenses (as defined in 28 U.S.C. 2412(d)(2)(A)) incurred by the Contractor or subcontractor in defending the marking, if the challenge by the Government is found not to have been made in good faith.

(h) *Survival of right to challenge.* The Government retains its right to challenge the validity of a restrictive marking asserted under this contract without limitation as to time and without regard to final payment. However, after issuing a decision sustaining the validity of a restrictive marking, the Government agrees not to rechallenge the validity of a restrictive marking under this clause unless additional evidence not

originally available to the Contracting Officer becomes available that indicates the restrictive marking is invalid.

(i) *Privity of contract.* The Contractor or subcontractor agrees that the Contracting Officer may transact matters under this clause directly with subcontractors at any tier that assert restrictive markings.

However, this clause neither creates nor implies privity of contract between the Government and subcontractors.

(j) *Flowdown.* The Contractor or subcontractor agrees to insert this clause in subcontracts at any tier requiring the delivery of technical data.

(End of clause)

[FR Doc. 85-25399 Filed 10-23-85; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt. 1-204]

Organization and Delegation of Powers and Duties; Federal Highway Administration; Drinking Age and Speed Limit

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: This amendment delegates to the Federal Highway Administrator certain authorities resulting from the enactment of the Surface Transportation Assistance Act of 1982 (STAA) and an amendment to title 23, United States Code, concerning the national minimum drinking age. The rule also clarifies existing delegations concerning the establishment and certification of enforcement of the national speed limit. **DATE:** The effective date of this amendment is October 24, 1985.

FOR FURTHER INFORMATION CONTACT:

Becky L. Bentson, Office of the General Counsel, Department of Transportation, Washington, DC, (202) 472-5577.

SUPPLEMENTARY INFORMATION: Since this amendment relates to Departmental management, procedures, and practice, notice and comment on it are unnecessary and it may be made effective in fewer than thirty days after publication in the Federal Register.

The Secretary has determined that certain authority vested in her by the Surface Transportation Assistance Act of 1982 (STAA; Pub. L. 97-424), related to the construction and financing of highways and other matters, and by an amendment to Title 23, United States Code (Pub. L. 98-363), which provides penalties for States that fail to have a minimum age of 21 for consumption and public possession of alcoholic

beverages, should be delegated to the Federal Highway Administrator. The Federal Highway Administrator's authority to (1) certify enforcement of speed limits, (2) withhold Federal-aid highway funds from States whose data exhibits an overly high percentage of drivers exceeding the speed limit and, (3) withhold Federal-aid highway funds from States who fail to enact a minimum age 21 drinking law, will be subject to the concurrence of the National Highway Traffic Safety Administrator. Finally, a reference to section 22 of the Urban Mass Transportation Act of 1964 contained in § 1.48(r)(3) has been deleted since the section has been repealed.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organization and functions (Government agencies).

In consideration of the foregoing, Part 1 of Title 49, Code of Federal Regulations, is amended to read as follows:

PART 1—[AMENDED]

1. The authority citation for Part 1 continues to read as follows:

Authority: 49 U.S.C. 322.

§ 1.48 Delegations to Federal Highway Administrator.

The Federal Highway Administrator is delegated authority to—

(b) Administer the following sections of Title 23, U.S.C.:

(23) 141, with the concurrence of the National Highway Traffic Safety Administrator as it relates to certification of the enforcement of speed limits;

(27) 146 through 152 and 155 through 157, inclusive;

(28) 154 and 158 each with the concurrence of the National Highway Traffic Safety Administrator;

(c) Administer the following laws relating generally to highways:

(2) Sections 103, 104, 11(b), 128(b), 131, 133(b), 135, 136, 141, 147, 149, 154, 158, 159, 160, 161, 163, 203, 206, 401 and 402 of the Federal-Aid Highway Act of 1973, as amended (Pub. L. 93-87, 87 Stat. 250; Pub. L. 93-643, 88 Stat. 2261).

(19) The Surface Transportation Assistance Act of 1982, Pub. L. 97-424, as amended.

2. Section 1.48 is amended by revising paragraphs (b) (23) and (27), (c) (2) and (19) and (r)(3); redesignating paragraphs (b)(28)-(34) as (b)(29)-(35); and adding new paragraph (b)(28) to read as follows. The introductory text of the section and the introductory text of paragraphs (b) and (c) are reprinted for the convenience of the reader.

(i) except sections 165 and 531 as they relate to matters within the primary responsibility of the Urban Mass Transportation Administrator; 105(f), 413; 414(b) (1) and (2); 421, 426, and Title III; and

(ii) Section 414(b)(1), with the concurrence of the National Highway Traffic Safety Administrator;

(r) * * *

(3) Section 18 as it relates to the formula grant program for non-urbanized areas in the Commonwealth of Puerto Rico.

Issued in Washington, DC, on October 11, 1985.

Elizabeth Hanford Dole,

Secretary of Transportation.

[FR Doc. 85-25196 Filed 10-23-85; 8:45 am]

BILLING CODE 4910-62-M

National Highway Traffic Safety Administration

49 CFR Parts 541 and 567

[Docket No. T84-01; Notice 7]

Vehicle Theft Prevention Standard and Selection of Covered Major Parts—Motor Vehicle Theft Law Enforcement Act of 1984

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes a vehicle theft prevention standard, as required by the Motor Vehicle Theft Law Enforcement Act of 1984. The standard contains performance requirements for inscribing or affixing identification numbers onto original equipment major parts and the replacement parts for those original equipment parts on passenger motor vehicle lines selected as high theft lines. The rule also specifies which parts are the major parts that must be so identified. Finally, it sets forth the manner and form for certifying compliance with the standard.

DATE: This rule is effective on and after April 24, 1986. This means that the theft prevention standard applies to passenger cars and major replacement

parts beginning with the 1987 model year.

Any petitions for reconsideration of this rule must be received by NHTSA not later than November 25, 1985.

ADDRESS: Send petitions to:

Administrator, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. It is requested, but not required, that 10 copies be submitted.

FOR FURTHER INFORMATION CONTACT:

Mr. Brian McLaughlin, Office of Market Incentives, NHTSA, 400 Seventh Street, SW., Washington, DC 20590 (202-426-1740).

SUPPLEMENTARY INFORMATION:

The Motor Vehicle Theft Law Enforcement Act of 1984

The Motor Vehicle Theft Law Enforcement Act of 1984 (Theft Act; Pub. L. 98-547) added Title VI to the Motor Vehicle Information and Cost Savings Act (Cost Savings Act). Title VI requires NHTSA, by delegation from the Secretary of Transportation, to promptly complete a series of rulemaking actions designed to mount a comprehensive attack on the problem of vehicle theft. This rule contains the most significant of those mandated rulemaking actions, the theft prevention standard setting forth the performance criteria for affixing or inscribing covered major parts of passenger motor vehicles with identifying numbers or symbols, as required by section 602 of the Cost Savings Act (15 U.S.C. 2022). Additionally, this rule carries out the following statutory mandates:

(1) It identifies the major parts which must be marked, as specified in section 603(a)(2);

(2) It establishes the cost limitation for marking major replacement parts, as specified in section 604; and

(3) It establishes the form and manner of certifying compliance with the theft prevention standard, as specified in section 606(c) of the Cost Savings Act.

The Notice of Proposed Rulemaking

To carry out these statutory mandates, NHTSA published a notice of proposed rulemaking (NPRM) at 50 FR 19728, May 10, 1985. The agency has received more than 240 comments on the NPRM, representing the opinions of vehicle and parts manufacturers, law enforcement groups, insurers, automobile dealers, members of Congress, direct importers of vehicles, and individual consumers. "Direct importers" are individuals and commercial enterprises that obtain foreign cars not originally manufactured for sale in the United States, bring those cars into this country under bond, and

modify the cars so that they can be certified as being in compliance with the U.S. vehicle safety, emissions, and bumper standards. Each of these comments has been considered and the most significant points are addressed below.

The NPRM contained a detailed background discussion of the provisions of the Theft Act and explained in detail the agency's rationale for proposing each of the requirements. This preamble follows the same organizational format used in the NPRM, so that readers can easily compare the two documents. A brief summary highlighting the most important points of this final rule follows.

Highlights of This Final Rule

1. Markings for Covered Original Equipment Major Parts

Original equipment covered major parts must be marked with the full 17-character U.S. vehicle identification number (VIN), except for engines and transmissions used by certain manufacturers. Manufacturers marking engines and transmissions with a VIN derivative, consisting of at least the last 8 characters of the VIN, as of the enactment date of the Theft Act may continue to use those derivatives. Section 604(b) of the Cost Savings Act provides that manufacturers engaged in identifying their engines and transmissions in a manner which "substantially complies" with the requirements of this standard shall not be required to conform to any identification system which imposes greater costs than those being incurred under the "substantially complying" identification system. NHTSA deems 8-character VIN derivatives to be substantially in compliance with this standard.

The performance requirements for both labels and other markings have been adopted substantially as proposed in the NPRM.

The only noteworthy difference is in the "footprint" requirement for labels. In response to the comments, the proposed requirement has been clarified in this final rule. Removal of a label must leave some residual part of the label or adhesive on the part, such that an investigator could detect that a label was originally present on the part.

2. Covered Major Parts

This standard specifies 14 major parts as the covered major parts which must be marked, if present, on all vehicles in lines selected as high theft lines. Those 14 parts consist of the 12 major parts

proposed in all three of the alternatives set forth in the NPRM, plus the two rear doors for 4-door vehicles. Two door cars will be required to have only 12 parts marked.

3. Markings for Replacement Parts

Replacement parts for covered original equipment parts are required to be marked with the letter "R" and the manufacturer's logo, for purposes of this standard, and with the symbol "DOT", as a certification of compliance with this standard, as proposed in the NPRM. Such markings are subject to the same performance requirements as the markings on original equipment parts. This standard also establishes a cost limit of five dollars (in 1984 dollars) for marking each replacement part.

4. Target Areas for Parts Marking

The agency has proposed that both original equipment and replacement parts be marked in a 5 centimeter X 5 centimeter target area, and that these target areas be separated by at least 15 centimeters. Many commenters suggested that this small target area was too restrictive and unnecessary to achieve the intended purpose. NHTSA was persuaded by these comments. Accordingly, this theft prevention standard requires the original vehicle manufacturers to designate target areas for marking both original equipment and replacement parts. The target area for the original equipment parts cannot exceed 50 percent of the total surface area of the part surface on which the marking will appear, and the target area for replacement parts cannot exceed 25 percent of the total surface area of the surface on which the marking will appear. The boundaries of the different target areas must be separated by at least 10 centimeters at all points along those boundaries. The vehicle manufacturers will be required to inform NHTSA of the target areas they have designated on each of the parts.

5. Who May Certify Compliance With This Standard

The NPRM proposed that only original vehicle manufacturers be allowed to certify compliance with this theft prevention standard. The proposal would have had the effect of prohibiting direct importers from importing any high theft vehicles into the U.S. This proposal was based on the Theft Act's prohibition against importing non-complying vehicles into the U.S., together with the Theft Act's ambiguity as to whether persons besides the original manufacturer should be allowed to certify compliance. The proposal was also based on the agency's tentative

conclusion that limiting certification authority would enhance the security of the marking technologies and the enforcement of this theft prevention standard.

Upon further consideration, NHTSA has decided that this regulation should not prohibit direct imports of vehicles. NHTSA also believes that the rulemaking record supports the law enforcement concerns expressed in the NPRM. Accordingly, this theft prevention standard sets forth special requirements for direct imports of vehicles in high theft lines. Such vehicles must:

(1) Be marked with the original Euro-VIN, and not a "homemade" U.S. VIN;
(2) Be marked by inscribing the required markings, and may not have labels affixed to the parts to satisfy this standard; and

(3) Be marked before the vehicle is imported into the U.S. This final requirement is explicitly set forth in section 607(a)(1) of the Cost Savings Act. Accordingly, the agency has concluded that it cannot adopt the suggestion in some of the comments that it implement a bonding program for direct imports, similar to that in effect for the bumper and safety standards. To implement this requirement, this rule specifies that direct importers of high theft vehicles must certify compliance with this theft prevention standard, by having a certification label permanently affixed to each covered vehicle before it is imported into the United States.

A detailed discussion of these issues and other issues raised during the comment period follows.

The Theft Prevention Standard

A. Original Equipment Parts

As noted in the NPRM, Title VI of the Cost Savings Act requires NHTSA to promulgate a theft prevention standard, which must be a minimum performance standard for the identification of the covered original equipment and replacement major parts of new passenger motor vehicles. This identification is to be achieved by inscribing or affixing numbers or symbols to such parts. The first question addressed in the NPRM concerned the numbers or symbols that should be used to identify original equipment major parts.

1. The Full Vehicle Identification Number (VIN) Must Be Inscribed or Affixed to All Covered Major Original Equipment Parts, Except the Engine and Transmission

The NPRM proposed that the full 17 character VIN be required as the

identifying number to be inscribed or affixed to the covered major original equipment parts, for three reasons. First, the full VIN represents a unique signature which cannot be repeated on any two vehicles during a 30 year period. Second, the full VIN is the basis for the National Crime Information Center's (NCIC) vehicle theft reporting system, which is used by law enforcement officials around the nation to detect and track stolen vehicles. Third, since the full VIN is now in common use for all law enforcement agencies, its continued use would cause minimal disruption in the personnel training and records kept by those agencies. However, the agency also sought public comment on the use of VIN derivatives as the identifying numbers.

Several of the commenters supported the agency's proposed requirement to use the full VIN. These commenters included all the law enforcement organizations, groups organized to try to reduce auto thefts, and Jaguar and Mercedes. Mercedes specifically stated that the use of a VIN derivative would require at least 8 characters to be unique, so the cost advantages of allowing the use of VIN derivatives would be minimal.

On the other hand, many of the vehicle manufacturers argued that they should be allowed to use VIN derivatives. The suggestions ranged from Honda's that manufacturers be required to use only the last 6 characters of the VIN to Volkswagen's that the manufacturers be required to use 11 characters of the VIN. Both General Motors (GM) and the United States Department of Justice urged that manufacturers be required to use the full 17 character VIN on labels, but be permitted to use a VIN derivative if they used other methods of identification, provided that the VIN derivative was also unique.

NHTSA seriously considered allowing the use of VIN derivatives if those derivatives contained enough characters to ensure that they would also be unique. However, NCIC has sent the agency a letter explaining that it has designed its theft reporting system to reject any inquiries concerning stolen vehicles manufactured in the 1981 and all subsequent model years which do not consist of the full 17 character VIN. NCIC stated that it had discussed allowing the use of VIN derivatives with state and local law enforcement officials, and the reaction from those officials was "very negative". This reaction was based on the administrative burden which would

result from not having a uniform length for reporting the identifying numbers for stolen and recovered vehicles and parts. This would lead to uncertainty that the reporting police department had properly entered the correct VIN derivative of a stolen vehicle, because of the varying lengths of derivatives which could be entered into the tracking system. Such uncertainty would force the law enforcement agencies and officers to expend significant time and effort in checking the accuracy of the reports before arresting suspected criminals in possession of the stolen vehicles. The lost time could result in being unable to arrest the suspect or seize the stolen vehicle.

If they did not expend this time and effort, the law enforcement groups stated their concerns about potential liability. The law enforcement groups would be accused of an improper arrest or vehicle seizure if they were to erroneously identify a vehicle or part as stolen. Such erroneous identifications would inevitably result, according to the law enforcement groups, if they are forced to try to reconstruct quickly the full VIN from a VIN derivative.

One of the primary purposes of the Theft Act is to make it easier for law enforcement agencies to establish that a vehicle or a major part is stolen. See H.R. Rep. No. 1087, 98th Cong., 2d Sess. at 2-3 (91984) (hereinafter referred to as "H. Rept."). If this purpose is to be promoted, this standard must ensure that police officers learning of suspicious, potentially stolen vehicle parts can quickly verify whether those parts are stolen. If this standard were to allow parts to be marked with VIN derivatives, the time necessary to positively identify a part as being from a stolen vehicle would be substantially longer than if the parts were marked with the full VIN. Police officers cannot be expected to wait to learn the true status of parts while the VIN derivative is reconstructed into a full VIN through contacts with the vehicle manufacturer or a private agency.

Further, NCIC has informed the agency that a review of its active record of stolen vehicles currently lists 12,382 cases where the last 8 characters of the VIN are identical in two or more cases. Hence, a match of the last 8 characters of the VIN would not by itself justify seizing the vehicle or arresting the driver. If NHTSA were to permit the use of VIN derivatives for marking parts, it would have to require the use of at least 11 characters of the VIN (the first three characters and the last eight) to ensure the derivative was unique. The cost differences for the vehicle manufacturer

to mark the full VIN instead of a shortened 11-character VIN derivative are not significant, and will not cause any manufacturer to exceed the fifteen dollar cost limitation. Additionally, VIN derivatives would require NCIC to restructure its data base, a complex and costly task. Finally, the full 17-character VIN includes the check digit, the purpose of which is to provide a means for verifying the accuracy of any VIN transcription. As such, the check digit ensures that the VIN of a stolen vehicle has been correctly entered. It also quickly shows when a VIN has been altered in an effort to disguise the fact that a vehicle is stolen. Accordingly, the agency has determined that the full 17-character VIN should be marked on covered original equipment major parts.

There is, however, one exception to this requirement. Section 604(b) of the Cost Savings Act [15 U.S.C. 2024(b)] specifies that "any manufacturer engaged in identifying engines or transmissions on the effective date of this title in a manner which substantially complies with the requirements of the theft prevention standard" shall not be required to conform to any identification system which imposes greater costs on the manufacturer than those being incurred as of such effective date. This statutory requirement means that the agency must determine what sort of identification system for engines and transmissions substantially complies with the requirements of this standard.

To the agency's knowledge, all manufacturers currently stamp an identifying number on their engines and transmissions. The NPRM stated that all manufacturers currently stamp their engines and transmissions with a VIN derivative, but the vast majority of manufacturers commented that this statement was not true. GM marks its engines and transmissions with a 9-character VIN derivative, and Ford and Chrysler mark those parts with an 8-character VIN derivative. The agency has no information indicating that any other manufacturers mark their engines and transmissions with a VIN derivative.

Two issues are thus presented. First, NHTSA must determine whether manufacturers that mark their engines and transmissions with a number other than a VIN derivative "substantially comply" with the requirement that all covered major parts be marked with the full VIN. Second, NHTSA must determine whether manufacturers that mark their engines and transmissions with 8- or 9-character VIN derivatives

can be said to substantially comply with that requirement.

With respect to the markings not derived from the VIN, NHTSA has concluded that such markings do not substantially comply with the requirement that a full 17-character VIN be marked on covered original equipment major parts. Such markings do not provide law enforcement officers with a means for quickly checking whether the component came from a stolen vehicle, because the NCIC data system relies on the VIN. The non-VIN markings consist of numbers generated and assigned by each individual manufacturer. The method for assigning the number is in the nature of a sequential production number for the particular engine or transmission. Accordingly, the number itself does not provide any means for quickly ascertaining the vehicle in which the component was installed, nor does the number identify the model year of the vehicle in which the component was installed. Thus, these markings neither substantially meet the identification requirements of this standard (the full 17-character VIN), nor achieve the purpose of these requirements (allowing law enforcement officers to quickly check whether covered major parts were originally installed on stolen vehicles).

BMW, Mercedes-Benz, Jaguar, Mazda, and the Automobile Importers of America (AIA) all stated that such markings should be found to substantially comply with the requirement that a full VIN be marked on covered original equipment parts. Some of these commenters stated that law enforcement officials from the countries in which the vehicles are produced have asked the manufacturers not to mark their engines and transmissions with a VIN derivative, because other numbering systems, according to those law enforcement officials, reduce the likelihood of thieves successfully altering these numbers.

NHTSA does not believe that this point is relevant in determining whether these non-VIN related markings "substantially comply" with the identification requirements for original equipment parts contained in this theft prevention standard. However, as explained above, the NCIC strongly prefers that the full VIN be marked as the identifier on covered parts. NHTSA believes it is more important that the preferences of the NCIC be accommodated in this theft standard than the preferences of law enforcement officials in other countries, since the theft standard applies only to vehicles sold in the United States. The

preferences of foreign law enforcement officials can be accommodated in the case of engines and transmissions for vehicles not designed to be sold in the United States.

AIA commented that a requirement forcing manufacturers to change their existing marking systems would require the stamping equipment to be reprogrammed, or might even require new stamping equipment. Further, the AIA stated that such a requirement would impose the significant administrative burden of separating U.S. engine blocks and transmission housings from the blocks and housings made for the rest of the world.

NHTSA recognizes that complying with a requirement to mark the VIN on engines and transmissions, or any other requirement, imposes costs and administrative burdens on the manufacturers. NHTSA must determine whether the requirement is necessary to carry out the purposes of the Theft Act, while imposing costs which can be met within the fifteen dollar per vehicle limit established for this theft prevention standard. As explained above, law enforcement officials have explained that they need parts identified with the VIN, if they are to effectively carry out the purposes of the Theft Act. In NHTSA's judgment, the requirement to mark the VIN on engines and transmissions, as well as the other covered major parts, will not cause any manufacturer to exceed the fifteen dollar cost limit. Hence, any burdens imposed by this requirement are consistent with the intent and provisions of the Theft Act.

AIA noted the practice whereby manufacturers purchase or supply engines and transmissions to other manufacturers, and stated that most of those parts are marked by the original manufacturer. AIA argued that requiring the vehicle manufacturer to obliterate these numbers and replace them with VINs would "not only be costly, but could also be very confusing to law enforcement officials." Additionally, AIA argued that requiring obliteration and new markings would violate the requirement of section 602(d)(1)(A) of the Cost Savings Act. That section provides that this theft prevention standard may not require any original equipment part to have more than a single identification.

This theft prevention standard does not require manufacturers to obliterate markings inscribed by other manufacturers, nor does it require any part to have more than a single identification. This standard requires only that the engines and transmissions be marked with the VIN. Any other

identification markings on those parts are not required by the standard, so their presence or absence is irrelevant for the purposes of section 602(d)(1)(A).

In the case of manufacturers currently marking their engines and transmissions with a VIN derivative, the agency has considered whether those manufacturers that use at least an 8-character VIN derivative, consisting of the last 8 characters of the VIN, can be said to substantially comply with the requirement that covered major parts be marked with the full 17-character VIN. As noted above, an 8-character VIN derivative is not unique. This is because it does not identify the manufacturer of the vehicle or the vehicle attributes, nor does it include the check digit. Accordingly, the agency determined that it would be inappropriate to allow an 8-character VIN derivative for the marking of all covered major parts.

However, an 8-character VIN derivative consisting of the last 8 characters of the VIN does identify the model year of the vehicle, the plant at which it was assembled, and the sequential production number of the vehicle. Trained investigators will be able to identify the manufacturer of an engine or transmission, by noting the particular design characteristics of the component. The manufacturer of the engine or transmission is not necessarily the manufacturer of the vehicle, as noted by AIA in its comments and discussed above. Hence, there will be some instances where the 8-character VIN derivative would not enable investigators to confirm immediately that an engine or transmission was installed in a stolen vehicle.

Permitting the use of VIN derivatives on engines and transmissions does not present as serious a law enforcement problem as would be presented if all covered major parts were permitted to be marked with VIN derivatives. Engines and transmissions are bulkier, heavier, and not as easy to transport as the other major parts of a car. Thus, police officers are more likely to have the time necessary to allow for a reconstruction of the full VIN from the 8-character VIN derivatives marked on these components. That reconstruction can be made reasonably quickly in the majority of cases, where the manufacturer of the engine or transmission and the manufacturer of the vehicle are the same.

After considering these facts, NHTSA has concluded that VIN derivatives consisting of at least the last 8 characters of the full VIN can be said to "substantially comply" with the requirement of this standard that the 17-character VIN be marked on all covered

parts. To the agency's knowledge, Chrysler, Ford, and GM are the manufacturers currently using at least an 8-character VIN derivative, consisting of the last 8 characters of the VIN, to identify their engines and transmissions. They and any other manufacturers using these VIN derivative markings on their engines and transmissions as of October 24, 1984, the date of enactment of the Theft Act, may continue using those VIN derivatives instead of the 17-character VIN to mark the engines and transmissions. All other vehicle manufacturers will be required to identify their engines and transmissions with the 17-character VIN.

Toyota stated that only one engine part should be required to be marked. Section 602(d) of the Cost Savings Act specifies that a part cannot be required to have more than a single identification, and the NPRM did not propose more than one marking for any part. For the purposes of this part, the engine should be marked on the block and the transmission should be marked on the housing. No other markings are required.

Ford stated that the proposed language, allowing engines and transmissions being marked with a VIN derivative as of the day before the effective date of this theft prevention standard to continue using that derivative for identification required by this theft prevention standard, appeared to be inconsistent with the requirement in section 604(b), which prohibits the agency from requiring manufacturers to conform to a more costly identification system for its engines and transmissions if the manufacturer was already engaged in identifying the engines and transmissions in a manner that substantially complies with this standard. Under the proposed language, Ford believed that new engine and transmission designs which were not being marked with a VIN derivative as of the day before the effective date of the theft prevention standard, because they were not yet in production, would be required to be marked with the full VIN. This, it was asserted, would conflict with the explicit requirement of section 604(b) that a manufacturer whose identification system substantially complied with the requirements of the theft prevention standard could not be required to undertake an identification system which imposed greater costs. NHTSA agrees with Ford on this point, and has modified the language to reflect this change.

Ford also commented that the NPRM proposed that manufacturers marking engines and transmissions with an acceptable VIN derivative as of the effective date of the standard would be permitted to continue such marking of those components. Ford correctly noted that section 604(b) refers to manufacturers using such markings as of the effective date of the Theft Act being permitted to continue using such markings. This final rule has been modified to reflect the language of section 604(b) of the Cost Savings Act.

2. The Theft Prevention Standard Must be a Performance Standard, Which is Practicable and Which Employs Relevant Objective Criteria

The legislative history is very clear on the type of standard which must be promulgated. Page 10 of the House Report reads as follows:

The DOT will establish the tests or general criteria which the identification must meet, but not how it is to be inscribed or affixed. That is the choice of each manufacturer. For example, we understand that a tamper-resistant label exists. If it can meet the performance tests or general criteria prescribed by the standard, the manufacturer may choose to use it to comply with the standard.

Because of this clearly expressed Congressional intent, this final rule does not adopt the suggestions in some of the comments that the agency mandate the use of a particular marking system, such as stamping, glass etching, or some patented marking systems. Several commenters asserted that the use of a particular marking system would ensure the greatest effectiveness for the theft prevention standard. However, NHTSA has no authority to mandate the use of any particular marking system. NHTSA has authority only to establish performance criteria that will accomplish the purposes of the Theft Act. The manufacturers are free to select any marking system that satisfies those criteria.

NHTSA believes that the performance criteria specified for labels in this final rule are objective, and will ensure that labels will serve effectively the purposes of the Theft Act. The criteria specified for non-label forms of identification are less rigorous, because methods such as etching or stamping the identification into the metal or the glass are inherently more permanent. Alterations of such identifications would be detectable by trained investigators. The criteria for the non-label forms of identification are intended primarily to ensure that the marking will be readily accessible to investigators.

(a) *The inscription or affixation must meet size and style requirements to ensure that it is clearly legible to investigators.* The NPRM proposed that the inscription or affixation of the VIN on covered major parts meet the same size and style requirements as the VIN is required to meet in sections S4.6, S4.7, and S4.8 of Standard No. 115 (49 CFR 571.115). Briefly stated, this meant that the characters would have a minimum height of 4 millimeters (mm), would consist of the Arabic or Roman numerals and/or letters set forth in Table 1 of 49 CFR 571.115, and would consist of capital, sans-serif characters.

Many manufacturers commented that the proposed 4 mm size was larger than was necessary for the characters. NHTSA proposed this minimum size to ensure that the identification would be clearly legible to investigators. However, a number of commenters observed that the 4 mm height is specified in Standard No. 115 to ensure that the VIN can be easily read through the vehicle's windshield. In the case of the theft prevention standard, these commenters stated that the parts will be examined by trained investigators carefully examining the parts to find the VIN. Several manufacturers and the National Automobile Theft Bureau (NATB) suggested that the minimum height for the characters be reduced to $\frac{3}{32}$ inch (approximately 2.5 mm), which is the same size as is currently specified for the information required to appear on vehicle certification labels by 49 CFR Part 567.

NHTSA has further considered this issue, and determined that the certification labels required by Part 567 are partly intended to provide information to knowledgeable persons specifically looking for that information. This is analogous to the purpose that the parts marking requirements are intended to fulfill. The $\frac{3}{32}$ inch minimum height requirement has been wholly satisfactory for the purposes of Part 567. NHTSA has, therefore, decided not to require larger characters for this theft prevention standard. Accordingly, this final rule adopts the minimum character height requirement currently specified in Part 567, i.e., $\frac{3}{32}$ inch.

Ford and GM both specifically commented that the sans-serif requirement for the characters should be deleted. Ford stated that their printers are not technically sans-serif, but that no party has experienced any difficulty in reading the characters. Ford suggested that the agency specify the use of block capital letters and numerals, as is done for the vehicle certification labels in Part 567. GM showed the characters as printed in the

"positive identification" system. The positive identification system consists of block capital letters and numerals, but gives unique characteristics to each character so that it is more difficult to alter a character to resemble a different character. GM stated that those characters are readily legible, but asked for the agency's opinion as to whether those characters would satisfy the sans-serif requirement.

Again, the purpose of the proposed sans-serif requirement was to ensure that the markings would be legible to the trained investigators examining the parts. The presence of small serifs would not affect that legibility. Therefore, the agency is not adopting the proposed sans-serif requirement. Instead the agency is adopting a requirement that the identification consist of block capital letters and numerals. This requirement is identical to the style requirements of Part 567. It is the agency's opinion that the GM "positive identification" characters appear to satisfy this requirement.

(b) *The inscription or affixation must be as permanent as possible.* The NPRM stated that the identification (whether affixed or inscribed) should be made in such a way that, under normal conditions of wear, tear, and repair, the identification would continue to meet the other performance requirements of the theft prevention standard for the average life of the car, which the NPRM stated to be 10 years. However, the NPRM proposed only that the markings be "permanent", and did not establish any number of years during which the markings would have to satisfy the other performance requirements of this standard. The NPRM also sought comments on requiring only that the marking remain legible for the average length of time during which cars are generally susceptible to high theft rates.

The commenters agreed with the agency's tentative judgment that it would not serve the purposes of the Theft Act to require the markings to remain legible only for the average length of time during which cars are generally susceptible to high theft rates. The theft investigators noted that many cars are stolen after the initial high theft period. If the identification is permitted not to be visible on those parts, it would tend to make such vehicles more attractive to professional thieves. This plainly would not serve the theft deterrent purposes of the Theft Act. No commenters argued in favor of adopting this alternative. For the reasons set forth above, this alternative has not been adopted in this final rule.

Many of the theft investigators urged the agency to specify some minimum period of time during which the markings would have to satisfy all the other performance requirements of this standard. The International Association of Auto Theft Investigators urged that there be a minimum 8 year life for labels, while the Coalition to Halt Automotive Theft (CHAT) urged that labels have a 10 year minimum life.

On the other hand, Chrysler, Ford, and GM all supported the idea of adopting the proposed permanence requirement without specifying a minimum time period as a definition of that concept. GM stated that Part 567 has used the word "permanent" without specifying any time period, and that the vehicle certification labels have been affixed so that there have been no significant disagreements between the manufacturers and the agency as to the meaning of the word. Ford stated its opinion that any greater specificity than "permanent" would require the agency to develop a performance test to measure whether the markings were permanent.

This rule adopts the proposed requirements on permanency, that is, it does not specify any minimum number of years during which the markings must continue to satisfy the other performance requirements of this standard. As noted by GM, this term has served its intended purpose when used in Part 567, and is a concept with which the manufacturers and the agency have had experience. The purpose of Part 567 was explained thusly in the preamble to the final rule establishing that Part: "The intent of the regulation is that the label should remain in place and legible for the life of the vehicle and not be easily transferable to another vehicle." 34 FR 1147; January 24, 1969. NHTSA believes that the purpose underlying the permanency requirement in Part 567 and this theft prevention standard are sufficiently similar that it is appropriate to express those requirements in the same way. Should that belief be shown to be incorrect, because the labels are not remaining affixed and legible for the life of the vehicle, the agency will initiate rulemaking to specify some minimum length of time during which the labels must satisfy the other requirements of this standard. However, such rulemaking would be premature at this time.

VW asked what the term "permanent" means in this standard. As noted above, it means exactly what it means when used in Part 567. That is, the label should remain in place and legible for the life of the vehicle.

Toyota stated that there was no way of knowing if labels will satisfy the permanence requirement, so this requirement should be deleted. NHTSA does not understand this comment, since Toyota's vehicles presumably comply with the "permanence" requirement in Part 567. NHTSA believes that either Toyota or the label manufacturer can obtain data, through tests or other means, showing whether labels will remain affixed and legible for the life of the car. Those data would form the basis for certifying compliance with this requirement.

Moreover, as stated above, this is a performance standard that sets forth general criteria which must be satisfied by whatever means of marking the manufacturer chooses. If Toyota is unable to certify that its labels will satisfy the permanence requirement, it will have to use stamping, etching, or some other method of marking its parts. The criterion of permanence is very important if this standard is to carry out the intent of the Theft Act. It seems obvious that markings that, after a short period of time, are not present on the vehicle or are not legible to investigators do not serve the purposes of the Theft Act.

(c) *Locations selected for labels must provide protection from damage as a result of normal maintenance and exposure conditions while still being visible to investigators without further disassembly once the parts are removed from the vehicle.* The NPRM proposed that labels be protected from damage as a result of normal vehicle repair and maintenance and exposure conditions. Inscriptions would not be subject to this requirement, because such marking methods are inherently more durable than labels. Accordingly, the agency does not believe it is necessary to specify protection from damage requirements for inscribed markings. If experience shows that the manufacturers are not locating those markings so as to protect them from damage, NHTSA will consider initiating rulemaking to amend this standard. All means of identification would be subject to the requirement of visibility to investigators without further disassembly once the parts are removed from the vehicle.

The National Automobile Dealers Association (NADA) stated that the legislative history of the Theft Act specifically instructs NHTSA to "consider the location of the number so that it will not be easily susceptible to damage in the normal course of dealer preparation (for such procedures as rustproofing and undercoating), or be

easily damaged in the course of repair, or regular automobile maintenance by repair shops or car owners." H. Rept. at 12 (Emphasis added). NADA urged the agency to modify the proposal to explicitly require that the label be protected from damage during dealer preparation operations. NHTSA believes that such a requirement is very closely related to its proposal. Further, it is consistent with the legislative history and needed to ensure that the labels will not routinely be obscured or damaged before the vehicle is sold to the first purchaser. Therefore, this final rule adds this requirement.

Ford commented that the locations chosen for the labels cannot protect the labels against possible damage during a collision and subsequent repairs, where the part might need bumping, grinding and repainting to be repaired. Neither the NPRM nor this final rule require the labels to be protected from damage during every repair for collision damage. Even inscriptions might well be obliterated or rendered illegible during some collision repairs. This rule does not require manufacturers to do the impossible; i.e., certify that labels will never be damaged during any work which might be performed on the part.

However, the legislative history states: "The Committee believes, as already noted, that one of the major factors that the Secretary and the manufacturers should consider in rulemaking is the location of the identification number in relation of the future reparability of the major part. The location selected should, to the greatest extent possible, not be a spot likely to be damaged in what is an economically repairable accident, if possible." H. Rept. at 24-25 (Emphasis added). It is hard to imagine a clearer expression of Congressional desire that the identification on covered major parts should be located so that it will not be damaged during most collision repairs. Hence, placing the labels on the fenders at the height of other vehicles' bumpers would seem to be precluded, since that is the area most likely to need the bumping and grinding to repair collision damage, as noted in Ford's comments.

It is imperative that the identification numbers not be destroyed or rendered illegible during repair and maintenance operations, to the greatest extent practicable, since destroyed or illegible labels will serve the interests of no one but auto thieves. To ensure the efficacy of the labels, this rule simply requires that which Congress intended; namely, that the vehicle manufacturers use their engineering judgment when deciding

where to apply the labels, so that those labels will be:

(1) In a place where they won't be disturbed by the use of any tools necessary in the installing, adjusting, or removing of the part or adjoining parts, or any portion thereof;

(2) On a portion of the part not likely to be damaged in a collision; and

(3) Protected from damage during normal dealer preparation procedures.

To clarify what is required of vehicle manufacturers, this rule specifies that the label shall be placed on an interior surface of the part as it is installed in the vehicle, if this placement is practicable, and that the label shall be positioned to satisfy the three criteria specified above.

GM commented that the requirement that labels be protected from damage during maintenance and repair of the vehicle should be deleted. GM stated that it was not clear how the manufacturer could certify compliance with the requirement that the label was protected from damage as the result of repair and maintenance. As noted above, the manufacturers are required only to ensure that the labels are protected from damage during foreseeable repair and maintenance operations and during normal dealer preparation operations. The manufacturer specifies the procedures its dealers are to follow during these operations, and recommends the tools to be used during such operations. Accordingly, the manufacturer already knows the procedures it has specified and the portions of the part most likely to be damaged in a collision. The manufacturer is simply required to certify that it has used this knowledge when deciding where to position the labels on its covered major parts.

VW commented that the agency should allow the use of an integral paint mask, so that the labels can be put on the parts before the vehicle is painted or rustproofed. Such a procedure is permissible under this standard, provided that the paint mask is removed from the label. If the mask were not removed, the identification would not satisfy the requirement that it be visible without further disassembly once the vehicle part has been removed from the vehicle. That requirement is essential if this theft prevention standard is to facilitate the quick and easy identification of parts by trained investigators.

Mazda asked that vehicle hatchbacks be allowed to be marked beneath the trim panels. Otherwise, Mazda commented, the identification marking would be visible to vehicle occupants. This rule does not permit any covered

major parts to have identification marks hidden behind trim panels. One of the major purposes of this theft prevention standard is to enable law enforcement officers to quickly determine if a motor vehicle part is stolen. If those officers must disassemble the part to look for the appropriate identification markings, their task would be more difficult.

NHTSA believes that the purpose of the Theft Act was to make the task of law enforcement officers as simple as possible, without imposing significant costs on vehicle manufacturers. No greater costs are imposed by requiring the markings to be visible to investigators. Therefore, the requirement for visibility is adopted as proposed.

Target Areas. To ensure that the identification markings are readily located by investigators, the NPRM proposed that those markings be placed in the same 5 centimeter x 5 centimeter (cm) area on each part of that type produced by the manufacturer. The manufacturers were free to select any 5 cm x 5 cm area as the target area, provided of course that the target area met the requirements of protecting the identification from damage during normal repair, maintenance, and dealer preparation operations and was visible to investigators without further disassembly. Comments were requested on whether this target area should be required to remain unchanged for the entire production run of the covered major parts or whether the manufacturers should be allowed to change this target area every model year.

Most of the manufacturers asked for some modification to the proposed 5 x 5 cm target area. Ford stated that a target area was unnecessary. Chrysler stated that a target area was incompatible with mass production techniques. VW stated that a 5 x 5 cm target area was both unreasonable and unnecessary. Nissan asked that the target area be expanded to 5 x 6 cm. Mercedes and Saab asked that the target area be expanded to 10 cm x 10 cm. GM asked that the target area be expanded to 15 cm x 15 cm. Mazda urged the agency to require only that some part of the identification be within the 5 cm x 5 cm target area.

In response to these comments, NHTSA has carefully examined the reasoning behind its proposed target area requirement. There were two primary reasons for proposing this requirement. First, a standardized location would facilitate quick identification checks by law enforcement officers. If the investigator knew exactly where a particular part on each line was required to be marked, the investigator would know where to look

for the identifying number without having to search the part for that number. The investigator would also be alerted to possible suspicious activity if the identifying symbol were in some location other than the required target area.

Second, the proposed target area for original equipment and the companion proposal for a target area for replacement parts were intended to ensure that there would be a separation between the areas where the identification would be marked on such parts. Criminals plainly will not be able to routinely sell stolen parts which can be identified as such, nor should there be a market among honest repair shops for unmarked parts which were required to be marked by this standard.

Accordingly, there will probably be an effort by chop shops and other thieves to try to obliterate the identifying numbers on original equipment parts and affix counterfeit replacement part identifications. If that counterfeit replacement part marking can be located directly over the obliterated original equipment part marking, it would be more difficult for the investigator to see the evidence of the obliteration of the original equipment part marking. With the target areas and the requisite distance between that for original equipment parts and replacement parts, the obliteration of the original equipment part marking would leave that area with evidence of the obliteration or with evidence of sanding and repainting. With either sort of evidence, the investigator would be alerted that the replacement identification should be carefully examined for authenticity.

NHTSA believes that both of these objectives are still reasonable and necessary if the theft prevention standard is to achieve its intended objectives. However, the agency also believes that the manufacturers raised valid points in the comments asserting that these objectives could be achieved in a less restrictive manner. Therefore, this final rule retains the target area requirement for original equipment parts, so as to achieve both the intended objectives, but makes the requirement less restrictive. This theft prevention standard requires the vehicle manufacturers to designate a target area for each covered major part. The covered major parts are set forth later in this preamble.

There is only one limitation on the target area which may be designated by the vehicle manufacturers, subject to the other performance requirements for labels set forth above. That is, the target

area for original equipment parts cannot exceed 50 percent of the surface area on the surface of the part where the original equipment part will have the identification affixed or inscribed. This requirement is included in this final rule to ensure that there will be adequate separation between the target areas for original equipment parts and those for replacement parts.

The vehicle manufacturers are required to inform the agency of the target areas selected for each covered major part. This information will be made available to the public in the docket section. NHTSA anticipates that the information will be primarily used by replacement part manufacturers and by law enforcement organizations to learn the location of the target areas on each manufacturer's original equipment parts. Further, the agency anticipates that this will be a minimal burden on the manufacturers, since Ford and GM commented that they have voluntarily provided such information to the National Automobile Theft Bureau (NATB) in connection with their voluntary parts marking programs over the past several years.

The agency has determined that this procedure and the companion procedure requiring vehicle manufacturers to designate target areas for marking replacement parts, discussed in detail below, will serve both the objectives the proposed 5 cm x 5 cm target area was designed to serve, by ensuring that trained investigators know the location of the target areas for both original equipment and replacement parts and ensuring an adequate separation of the target areas for marking original equipment and replacement parts. It will do so while providing manufacturers with maximum flexibility to avoid unnecessary production burdens and/or costs.

Regarding the issue of whether the target area should be maintained for the production run of the major parts or whether that target area should be allowed to be changed each model year, opinion was very divided between vehicle manufacturers and law enforcement groups. The vehicle manufacturers uniformly indicated that they should be allowed to change the target area after each model year. Their position generally was that unexpected design changes sometimes occur between model years, which could make it impracticable to continue using the previously specified target area. On the other hand, the International Association of Auto Theft Investigators and CHAT urged the agency to standardize the location of the original

equipment markings over the entire production run of the parts. CHAT stated that a fender from any model year will not have any model year identification other than the VIN. If the target area varies from model year to model year, an investigator might well have to check four or five different places to see if the fender has the necessary marking.

NHTSA believes that the expansion of the permissible target area in this final rule has largely obviated the manufacturers' concern about being required to use the same target area over the entire production run of the part. The expansion of the target area has also increased the need for theft investigators to have such target area standardized over the entire production run of the parts. Accordingly, this final rule specifies that the target area must remain constant over the entire production run of the parts. It does, however, allow an exception for a situation where a restyling of the part makes it impracticable to mark the part in the original target area. In such cases, the manufacturer would be required to inform the agency of the redesign and the new target area. It will be an easy matter for a trained investigator to differentiate the restyled part from the old part and look for the markings in the different target area.

(d) *Removal of the identification number must cause that identification to self destruct and alter the appearance of the vehicle part.* The NPRM proposed these requirements for the following reasons. It is critically important that thieves not be able to remove an identification marking label legitimately affixed to the part by a manufacturer and transfer that label intact and undamaged to a stolen part. CHAT commented that this was one of the most significant proposed requirements in the NPRM, and urged the agency to adopt it as proposed. No other commenter specifically addressed this proposed requirement, and it is adopted in this final rule to ensure that legitimately affixed labels cannot be removed from parts and reapplied to other parts.

As a further precaution, the NPRM proposed that an alteration of a character on the label be required to leave traces of the original character or otherwise visibly alter the appearance of the label. For other means of identification, the NPRM proposed that an alteration of any part of the identification be required to visibly alter the appearance of the vehicle part. Both Toyota and Ford commented that the label should only be required to leave

evidence that an attempt was made to alter or obliterate a character of the VIN. These commenters noted that this would not necessarily leave a trace of the original character.

The agency notes that the NPRM did not propose to require that an attempt to alter or obliterate a character on the label always leave a trace of the original character. It proposed only that it do that or otherwise visibly alter the appearance of the label. Ideally the alteration would leave a trace of the original character so that the legitimate owner of the part could be informed of its recovery. However, the NPRM recognized that this would not always be practicable with current labels. In those cases where it is not practicable, the proposed requirement would be satisfied if the appearance of the label was visibly altered. This requirement is identical to the understanding expressed by both Ford and Toyota, and it is adopted as proposed.

Ford also commented that the proposed requirement that alterations of the identification number visibly alter the appearance of the vehicle part, if the identification number is applied by some means other than labels, should be modified. The reasoning behind this comment was as follows: First, according to Ford, it is the identification number, and not that of the vehicle part, which would be altered in appearance. Second, a skillful alteration, such as over-stamping, might not visibly alter the appearance of the number. The alteration would be latent and would be detectable only with further laboratory or further field investigation. Accordingly, Ford requested that the requirement be modified so that attempts to alter the identification number "be detectable".

NHTSA has carefully considered this comment. The agency did not intend that the alteration of the identification number on an engine, for instance, must visibly alter the appearance of the entire engine. The proposed requirement was intended to refer to the appearance of the part surface on which the identification number is marked, and not to the appearance of the entire part. It is appropriate to be more specific in this final rule, and limit the requirement so that an attempted alteration must visibly alter the appearance of the part surface on which the identification number is marked, rather than generally requiring it to alter the appearance of the part.

However, this rule does not incorporate Ford's suggested requirement that the attempted alteration only "be detectable". That

criterion would require that all investigators have laboratory equipment and possess the highest skills, if they were to be altered to the attempted alteration. However, this theft prevention standard is designed to facilitate the recognition of any alterations by reasonably skilled trained investigators working under field conditions. To serve that function, it is necessary that the attempted alteration at least give some visual indication to the investigator that the part should be more carefully examined. Such indication would not be required under the requirement suggested by Ford, and so it is not adopted in this rule. Attempted alterations must visibly alter the appearance of the part surface on which the identification number is marked, in the case of means of identification other than labels.

A number of commenters addressed the proposed "footprint" requirement for labels under this section. That proposal would have required that removal of the affixation must create or uncover physical evidence that the affixation was originally present or required to be present. The 3M Corporation, a leading manufacturer of these labels, commented that a footprint would not remain if some extraordinary means of eradication were used on the areas where the labels were affixed. VW and Saab stated that the proposed requirement that removal of the label must "discernibly alter the appearance of the vehicle part" should be narrowed to require only that some residual parts of the label must remain. Saab stated that if the agency intends a broader requirement, it ought to include the compliance test procedures it will follow in this standard. Chrysler stated that the footprint requirement should be deleted because it would create engineering problems and might "violate" their rustproofing procedures. GM stated that the footprint requirement should be deleted because of the many unresolved questions surrounding this area. CHAT, on the other hand, stated that any compromise of the footprint requirement would undermine the integrity and effectiveness of the theft prevention standard.

In light of these comments, the agency reexamined that proposed requirement in detail. If there were no footprint requirement and the label were removed from a stolen part, there would be no evidence that a label had ever been on the part. NHTSA agrees with CHAT's comment that this would substantially reduce the effectiveness of this theft prevention standard.

On the other hand, NHTSA agrees with the manufacturer's comments stating that the footprint left by current labels would not really alter the appearance of the vehicle part. The labels work by leaving a residue of adhesive which cannot be removed with most solvents, but the residue is not visible under natural light conditions. Adopting the proposed requirements would require the manufacturers to certify that removal of the labels would discernibly alter the appearance of the parts, and it is not clear that current labels would do so, particularly if the parts were painted and rustproofed before the label were affixed.

The label manufacturers have indicated that the development of an adhesive that would alter the appearance of the part when removed is feasible, but has not yet been developed. While such a feature would significantly enhance the ability of law enforcement personnel to detect tampering with a label, the agency does not believe it is appropriate in this case to impose a requirement beyond the limits of current technology. NHTSA anticipates that, as this enhanced label technology is developed and labels incorporating this feature are offered for sale, the vehicle manufacturers will voluntarily include specifications for such technology into their orders for labels used for marking parts in accordance with this standard.

Accordingly, this standard requires only that removal of the labels must leave residual parts of the label, including the adhesive, on the part, and that these residual parts must be discernible by trained investigators. For purposes of this requirement, "discernible" does not mean that the residual parts must be visible under natural light. This modification of the proposed requirements is intended to allay the concerns of those manufacturers who believed that the NPRM was asking them to certify a performance for current labels which is beyond their capabilities. It does not represent any change from what the agency intended to propose in the NPRM.

(e) *The affixation must be resistant to counterfeiting.* The NPRM proposed that this requirement be applicable only to labels. Aside from steps taken by the label and vehicle manufacturers to safeguard the labels and the marking system, the NPRM would have required each label to bear a distinctive logo or trademark identifier along with the VIN. By requiring the marking to be incorporated in the material of the label itself instead of simply being stamped

on the label, the NPRM intended to increase the difficulty of counterfeiting the labels because standard templates could not be readily located or purchased.

3M commented that all means of identification should be required to be resistant to counterfeiting, not just labels. The agency proposed that only labels be subject to this requirement because stamping, etching, and other means of identification are readily available to the public. A stamped or etched marking will resemble any other stamped or etched markings.

3M also commented that it assumed that its CONFIRM logo could serve as the logo for all manufacturers. That assumption is incorrect. As stated above, NHTSA proposed that each manufacturer's distinctive logo or trademark identifier would be incorporated in the material of the label itself, as a further protection against counterfeiting of the labels. CHAT commented that the requirement for each manufacturer's distinctive logo or trademark identifier should minimize the ability of non-legitimate users to use "off-the-shelf" technology to produce their own labels. NHTSA agrees with CHAT, because the proposed requirement would require counterfeiters to alter the process by which the label is produced instead of just altering the finished product. Moreover, if those non-legitimate users were to somehow acquire the labels, such labels could only be applied to one manufacturer's vehicles. Therefore, this requirement is adopted as proposed.

Security Etch commented that the resistance to counterfeiting requirement was not objective and, therefore, was not permissible in this theft prevention standard. NHTSA believes that the general criteria set forth in this requirement are sufficient to alert both label manufacturers and vehicle manufacturers to what is required. The House Report accompanying the Theft Act explicitly authorized the agency to promulgate "general criteria which the identification must meet." H. Rept. at 10. It is the agency's belief that Congress authorized the use of general criteria because of its desire that the theft prevention standard be swiftly implemented. See H. Rept. at 11.

To further specify what is intended by those general criteria, NHTSA has included a specific requirement in this final rule that each manufacturer's logo or trademark identifier be incorporated in labels, as was proposed. The agency believes that these requirements are more than sufficient to satisfy the mandate of the Theft Act that the theft

prevention standard be objective, as that term was explained in the relevant legislative history.

3. Parts To Be Covered by This Standard

Section 602 of the Cost Savings Act provides that this theft prevention standard applies to only the covered major parts of high theft lines, and limits the number of covered major parts to 14 per vehicle. Section 601(7) of the Cost Savings Act sets forth a candidate list of 15 or 17 major parts (depending on whether the car has two or four doors) from which covered major parts can be selected.

To implement these statutory provisions, the NPRM set forth three alternatives for selecting the covered major parts. Alternative 1 listed the following 12 major parts as those which would be selected as covered major parts on all high theft lines:

1. Engine;
2. Transmission;
3. Right front fender;
4. Left front fender;
5. Hood;
6. Right front door;
7. Left front door;
8. Front bumper;
9. Rear bumper;
10. Right rear quarter panel;
11. Left rear quarter panel;
12. Decklid, tailgate, or hatchback (whichever is present).

These 12 parts were selected from section 601(7)'s list of major parts because they were found to be those most frequently repaired or those most costly to replace. This listing did not include the rear doors on 4-door cars, the grilles, the trunk floor pan, or the frame, which are all specifically listed in section 601(7).

The second alternative would have required the marking of the same 12 parts as the first alternative, and an additional two parts. These two parts would not have been specified in this standard. Instead, this alternative would have allowed the individual manufacturer to propose the additional two parts to the agency. NHTSA stated in the NPRM that it would agree to the manufacturer's proposal if the two parts were listed in section 601(7), and would initiate rulemaking if the part was comparable in design or function to any of the listed parts. The reason for proposing this alternative was that law enforcement groups have consistently urged the agency to require the marking of the statutory maximum 14 parts on all vehicles.

The third alternative was also based on the agency's inclination to require the marking of the statutory maximum of 14 parts. It was similar to the second

alternative, except that the two additional parts to be marked would be specified in this final rule. The NPRM stated that the candidates for the additional parts to be selected were the five listed in section 601(7) which had not been included in the 12 parts listed in the first alternative.

The comments on these alternatives again reflected a split of opinion between vehicle manufacturers and organizations involved in reducing auto thefts. Chrysler stated that it was not necessary to mark more than 8 parts. BMW urged the agency not to specify that 14 parts must always be marked. VW and AMC urged the agency to require the marking of as few parts as possible by the manufacturers. Ford and Nissan supported the first alternative listed in the NPRM. Ford stated that the uniform marking of certain parts would make it easier for investigators to know on what parts he or she should look for the identification numbers. GM proposed that 10 parts be marked on all high theft cars, and that two additional parts be marked on those cars. Those two additional parts would be selected by agreement between the agency and the individual manufacturer. Saab supported the third alternative and suggested that the rear doors, if present, be the two additional parts selected for marking.

On the other hand, the groups involved in reducing auto theft unanimously supported the concept of requiring 14 parts to be marked on high theft cars. The Delmarva Investigators, the International Association of Auto Theft Investigators, and the Maryland State Police all commented that the frame should be added to the list of 12 parts set forth in the first alternative of the NPRM, and the 14th part to be marked should be selected by agreement between the agency and the manufacturer. CHAT stated that the rear doors should be added to the 12 parts listed in the NPRM, since all four doors are taken from a vehicle when it is stripped. CHAT urged that if any of the 14 required parts were not present on a high theft vehicle, the manufacturer should be required to propose alternate parts to be identified, because 14 parts should be marked on each high theft vehicle. The NATB agreed with CHAT's comments, and suggested three alternatives to require high theft cars to have 14 parts marked, depending on how such cars are configured.

There were a number of commenters addressing the question of whether certain parts should or should not be included in the list of covered major parts. The frame or, in the case of a unitized body, the supporting structure

which serves as the frame was recommended to be included in the designation of covered major parts by both manufacturers and theft investigators. For instance, the FBI stated that marking the frame is the only way to identify a stripped or burned-out vehicle. The Delmarva Investigators stated that the frame is often used to identify illegally altered stolen vehicles. GM stated that many manufacturers have voluntarily marked the frame for many years, and this identification has proven useful to law enforcement. A failure to select the frame as a covered major part in this final rule would cause GM to reevaluate whether it should continue voluntarily marking the frame. Ford, on the other hand, stated that marking the frame should be given a low priority. This was because passenger car design is moving away from traditional frame construction to unitized body construction, which does not use a frame.

NHTSA has determined that the frame need not be selected as one of the covered major parts for the purposes of this standard. The frame itself is almost never stolen or replaced on a vehicle. The only reason for making such a selection would be to ensure that the remains of a stripped vehicle can be identified. As noted by Ford, there will be few, if any, new passenger cars produced in the future using frame construction. In the case of cars using unitized body construction, the objective of ensuring that an identifiable part of the vehicle remains after the vehicle has been stripped can be achieved by requiring the marking of both rear quarter panels. Those rear quarter panels are an integral part of the supporting structure which serves as the frame for unitized bodies, and generally remain with the frame. Accordingly, the agency does not believe there is any reason to select the frame as one of the covered major parts.

A number of commenters also questioned the agency's selection of rear quarter panels as covered major parts. Mitsubishi, BMW, Nissan, and Mazda stated that the rear quarter panels are not really separate parts in the case of unitized bodies, since they can't be removed as separate parts from the unitized body. However, the Theft Act clearly designates the rear quarter panels as separate parts which can be selected as covered major parts. NHTSA believes there is value in marking both rear quarter panels, because they would be among the costliest major parts to replace. They will also serve as an effective surrogate for marking the frame in unitized body vehicles, as

discussed above. For these reasons, NHTSA is not convinced by GM's comment that, because there is no evidence that rear quarter panels are by themselves high theft parts, those panels should not be selected as covered major parts. Given the high cost of the rear quarter panels, such parts could be especially profitable to chop shops. One of the purposes of this theft prevention standard is to increase the risks for those chop shops (H. Rept. at 5), and the agency believes it is especially important to increase the risks associated with the most potentially profitable parts. Moreover, marking of both rear quarter panels would serve the law enforcement objective noted above in the discussion on why the frame was not selected as a covered major part. Accordingly, the theft prevention standard requires the marking of both rear quarter panels.

Mazda stated that the rear quarter panels on their unitized body vehicles consist of an inner structural side panel which is an integral part of the unitized body shell to which is attached an exterior body panel. Mazda asked which of those two panels should be marked, or if both should be marked. In these instances, both the inner side panel and the exterior body panel comprise the rear quarter panel of the car. Marking either panel would comply with the requirement that the rear quarter panel be marked.

The commenters generally questioned the agency's selection of the front and rear bumpers as covered major parts. Chrysler stated that most cars in the future will not have traditional chrome-plated bumpers with a face bar. Instead, those vehicles will use soft front and rear fascia materials which are integrated with the front and rear of the body. Chrysler stated that it knows of no feasible way to permanently attach a label to that soft fascia material.

Earlier in this preamble, NHTSA explained that it is required to promulgate a performance standard. The fact that manufacturers may have to use some means of identification other than labeling is not by itself a valid reason for not selecting a part as a covered major part. If a manufacturer is unable to certify that labels can satisfy the performance standard when attached to a covered major part, the manufacturer will have to use some other means of marking the part, such as stamping or etching.

Additionally, Chrysler argued that these bumper designs are not really separate parts, but are an integral part of either the front or rear end. Accordingly, Chrysler argued that the new bumpers will not be high theft

items. The Department of Justice commented that, as far as they know, bumpers are not involved in much chop shop activity. The Justice Department accordingly recommended that the rear door on four door cars should be required to be marked in lieu of the bumpers.

According to the information currently available to NHTSA, the front and rear bumpers are the most often replaced major parts on vehicles. This, of course, results from the function of these components, which is to protect the front and rear end of the vehicle. Hence, these parts would seem to be natural targets for chop shops, since they are such high demand items by repair shops.

Moreover, the fact that current information indicates that bumpers have not been prime targets for chop shops is not dispositive. None of the front end components are marked on most high theft cars today. In this situation, it stands to reason that the most expensive components of the front end, the hood and the fenders, would be most desirable to chop shops, because of the potential profits. However, if this standard were to require the marking of the hood and fenders, but not the bumpers, chop shops could with relative safety "clip" the bumpers off stolen vehicles and fence those parts. The legislative history of the Theft Act noted that marked components are often junked by criminals, while the unmarked components are fenced to salvage and repair shops. H. Rept. at 4. It would be inconsistent with the purposes of the Theft Act to leave open the possibility that chop shops could with relative safety steal and fence the most often replaced major parts of high theft lines, because NHTSA failed to select the bumpers as covered major parts.

Accordingly, this final rule selects the front and rear bumpers as covered major parts. The agency concurs with the manufacturers' comments that these bumpers frequently consist of many components. For the purposes of this requirement, the marking of the bumper will be satisfied by marking the face bar or the fascia, but would not be satisfied by marking the rub strip, bumper guards, or energy absorber.

After having determined that these specific component parts should or should not be selected as "covered major parts" under section 602(a)(1) of the Cost Savings Act, NHTSA had to determine which of the three proposed alternatives should be incorporated into the theft prevention standard. The first proposed alternative offered the advantage of uniformity of parts marking, so that investigators in the

field would know which parts were to be marked on all high theft line vehicles. Adopting the second alternative would mean that two of the fourteen parts to be marked would vary from manufacturer to manufacturer, and this would create needless complexity for the investigators. However, the agency agrees with the comments by the Justice Department, CHAT, and Saab that all current evidence indicates that all four doors are taken when a four door vehicle is stripped by criminals. It would be inconsistent with the purposes of the Theft Act to allow the rear doors to be stolen and fenced with minimal risk. For the reasons stated above, this final theft prevention standard adopts the third proposed alternative, adding the two rear doors to the list of the 12 major parts given in the first alternative. This means that two door vehicles in high-theft lines will have 12 covered major parts, and four door vehicles will have 14 covered major parts. Further, it includes the advantage of the first proposed alternative of uniformity of parts marking between the different manufacturers.

4. Cost of Compliance With the Theft Prevention Standard

Section 604(a) of the Cost Savings Act provides that the theft prevention standard "may not . . . impose costs upon any manufacturer of motor vehicles to comply with such standard in excess of \$15 per motor vehicle . . ." To amplify this limitation, the House Report stated, "(t)his is a limitation on DOT. If DOT, when promulgating the standard, determines that this cost will be exceeded, the standard should not be issued until it is adjusted to be within the limitation. In short, there is no authority to issue a standard that exceeds the cost limitation." H. Rept. at 16.

NHTSA stated its interpretation of this language in the NPRM. To repeat, NHTSA believes that it has no authority to issue a standard which cannot reasonably be met by all manufacturers for \$15 or less, but this language does not require the standard to be capable of being met for \$15 or less by every manufacturer using every technology. In other words, this standard meets the cost limitation of section 604(a) if there is at least one reasonable means of compliance available to each manufacturer that would cost not more than \$15 per vehicle, based on reasonable and generally accepted management and accounting techniques.

The agency has broad discretion to make adjustments to the standard if it exceeds the \$15 limit. These adjustments

would then be generally applicable to all manufacturers. NHTSA believes it is clear that Congress did not contemplate that no standard would be issued merely because one manufacturer claims unverified costs above that limit. Moreover, as explained in the NPRM, Congress did not give the agency authority to exempt any manufacturers entirely from the standard, nor does the agency have the authority to modify the standard for a particular manufacturer to bring that manufacturer's costs below the \$15 limit. The same performance requirements must pertain to all manufacturers even if adjustments are needed to the standard so that it is within the \$15 limit.

The agency concluded this section of the NPRM by stating its anticipation that no manufacturer would make a claim that it is unable to meet the standard for \$15 per vehicle, given the availability of inexpensive labeling and engraving technologies. However, Ferrari did make such a claim, and stated that for a small manufacturer the marking of 14 parts with the VIN "would create enormous problems with the management of the system and would raise costs well in excess of \$15 for each vehicle". The only substantiation for this claim was that the marking requirements would force the small manufacturer to determine the U.S. versions of its vehicles as early as the bodywork stage of production.

NHTSA is not persuaded by this comment. There are inexpensive labeling and engraving technologies available for use by Ferrari. Foreign manufacturers must determine whether the vehicle is to be a U.S. or European version before the vehicle has been built, so that it can be certified as complying with the U.S. vehicle safety and emissions standards. At that time, Ferrari can assign a U.S. VIN and use the inexpensive marking technologies to mark the covered major parts of its high theft lines, for those vehicles to be sold in the United States. Accordingly, NHTSA believes Ferrari can comply with this standard at a cost of no more than \$15 per vehicle.

VW commented that it might not be able to comply with this standard at a cost of \$15 or less per vehicle. As support for this position, VW stated only that its cost of compliance would depend upon which of its lines were selected for coverage under this standard. No other manufacturer stated that it could not comply at a per vehicle cost of \$15 or less. NHTSA's estimate of compliance costs is less than \$10 per vehicle if the parts are stamped or engraved and \$5 per vehicle if the parts

are labeled for the larger manufacturers. For low volume manufacturers, NHTSA estimates that it will cost between \$7 and \$9 per vehicle to sandblast the markings into the parts. Based on this information, NHTSA concludes that this standard satisfies the cost limitation of section 604(a) of the Cost Savings Act.

Ferrari also asked that NHTSA exempt from the requirements of this theft prevention standard high theft car lines which have fewer than 20 thefts per model year. Section 603(a)(1) of the Cost Savings Act treats "passenger motor vehicles of any line" as part of a high theft line, if that line meets certain conditions. Congress granted exemption authority to the agency in section 605 of the Cost Savings Act for vehicles with original equipment anti-theft devices which meet certain conditions. There are no other exemptions provided in Title VI of the Cost Savings Act. An old principle of legal interpretation is expressed in the maxim "*expressio unius est exclusio alterius*"; literally, the expression of one thing is the exclusion of another. See *Earl of Southampton's Case*, 1 Dyer 50a, 73 Eng. Rep. 109 (K.B. 1541); *Marbury v. Madison*, 1 Cranch (5 U.S.) 137, at 174, 175 (1803). When Congress drafted the Theft Act so as to provide one means of exempting vehicles from its requirements, it is presumed that Congress intended to exclude other means of exempting vehicles from those requirements.

The presumption that Congress did not intend low volume manufacturers to be excluded from the theft prevention standard because of the relatively few vehicles they produce is reinforced by comparing Title V and Title VI of the Cost Savings Act. Title V expressly provides NHTSA with the authority to exempt small manufacturers from the generally applicable requirements of the fuel economy standards in section 502(c) of the Cost Savings Act. The absence of any comparable exemption authority in Title VI of the Cost Savings Act shows a Congressional intent that vehicles not be exempted from the requirements of the theft prevention standard just because relatively few of those vehicles are produced or stolen. Accordingly, the Ferrari comment is not adopted in this final rule.

B. Performance Standards for Replacement Parts

Title VI of the Cost Savings Act provides that the theft prevention standard shall apply to replacement parts as well as to the original equipment parts. Section 602(d)(2) specifies that the standard may not require identification of any replacement part which is not designed

as a replacement for a covered major part required to be identified under the standard. It further provides that the standard can not require the inscribing or affixing of any identification other than a symbol identifying the manufacturer and a common symbol identifying the part as a major replacement part. The legislative history notes that the marking for replacement parts "could be a manufacturer's logo with the initial 'R' for replacement part affixed or inscribed on the part." H. Rept. at 12. To implement these requirements, the NPRM proposed the following requirements.

1. Number or Symbol To Be Used and Location of the Marking

The agency proposed that the replacement parts be marked with the manufacturer's logo and the letter "R", precisely as Congress had suggested. These markings were required to be at least one cm in height, as compared with the 4 millimeter height proposed for original equipment parts marking.

In response to the proposed requirements, both Ford and GM asked why the minimum size for the replacement part identification was larger than that proposed for original equipment part identification. The larger markings were proposed for replacement parts than original equipment parts because of the different information being marked on the parts. Original equipment parts will be identified with the VIN. Experience has shown that markings which are 3/32 of an inch have been readily legible for investigators. Replacement parts will only be identified with the letter R and the manufacturer's logo. NHTSA proposed the one cm minimum height for these markings so that the logo would be more clearly identifiable and more difficult to counterfeit. These replacement part markings would have to meet the same performance requirements as original equipment parts.

NHTSA believes the replacement parts marking is especially important. Numerous commenters at the public hearing on December 6 and 7, 1984, noted that the theft prevention standard is only as good as the replacement parts marking standard, because chop shops and other motor vehicle thieves will try to obliterate the VIN markings from original equipment parts and to replace those VIN's with counterfeit logos and "R" designations. It seems far easier to counterfeit a single letter and logo than to counterfeit a new VIN marking for each stolen part. Therefore, this rule adopts the proposed one cm minimum

height requirement for replacement part markings.

Both the Auto Internacional Association and the Specialty Equipment Market Association commented that the manufacturer of the replacement part should not be required to mark its logo on the replacement part. Instead, these commenters asserted that the manufacturer's initials should be required, since those would also identify the manufacturer and would be required to be permanent, tamper-resistant, etc.

NHTSA is not persuaded by these comments. The manufacturer's logo is more distinctive and more difficult to counterfeit than simple initials would be. If thieves can successfully obliterate the original VIN markings on stolen parts, it would be a very simple task to affix or inscribe initials on the stolen part. Moreover, it would be difficult for investigators in the field to judge if the initials represented legitimate markings or were counterfeit, if the counterfeiting were done with even minimal skill. Logos, on the other hand, are unique identifiers of each manufacturer and will be quickly identified by the investigator. Further, a counterfeited logo should be easier for investigators to identify than some counterfeited initials. Accordingly, this final standard retains the requirement that covered major replacement parts be marked with the manufacturer's logo and the letter "R".

CHAT commented that the agency should require the manufacturers of replacement parts to register their names, addresses, and logos with the agency. This, according to CHAT, would help both NHTSA and law enforcement officers to identify the replacement part manufacturer from its logo and to verify that the logo was valid. Regardless of the merits of this suggestion, it is outside the scope of this rulemaking. However, should experience with this standard indicate that trained theft investigators are unable to identify or verify logos without a central registry, the agency would consider whether it ought to initiate rulemaking to require this sort of registration.

The NPRM proposed that the logo marked on the replacement part be that of the part's manufacturer. VW asked that this be modified to specify that the logo be either that of the part's fabricator or that of the vehicle manufacturer for which the part is made, at the vehicle manufacturer's option. This comment relates to the common practice of vehicle manufacturers of leasing out the molds used to make the major parts of their vehicles to another party. That other party then produces the parts using the manufacturer's mold. The parts are then

marketed as replacement parts made by the vehicle manufacturer.

NHTSA did not intend to disturb this practice, nor did it intend to require that parts made for a manufacturer by an agreement with a third party be identified as parts not actually made by the vehicle manufacturer. Accordingly, for the purposes of this theft prevention standard, the manufacturer of a replacement part will be considered to be either the actual fabricator of that part or the party that provides the fabricator with the mold used to make that part and markets the replacement part as its own. The question of which of these two parties is the manufacturer for the purposes of this standard is left to those parties to decide, through contract or other agreement. Whichever party agrees to be the manufacturer of the replacement part will be responsible for ensuring that the markings on the part comply with this performance standard, and must certify that compliance. If neither party elects to be the manufacturer of the replacement part, the party that markets the replacement part as its product will be responsible for certifying that the part complies with this standard.

GM commented that the NPRM should be modified to permit the use of labels for replacement part marking. Both the NPRM and this final rule allow manufacturers to label the markings on replacement parts, provided that the labels satisfy the performance criteria. Honda and Jaguar both stated that they will have to inscribe the markings on their replacement parts, to allow for painting and rustproofing. This may well be true, but the standard does not require it. If these manufacturers can devise a way to protect the labels during painting and rustproofing, and satisfy the other performance requirements, they are free to use labels. However, they may inscribe the parts, if they determine that to be the easiest means of complying with the standard.

Mazda stated that its replacement parts are shipped just primed, and the part must be painted and rustproofed by the dealer before it is installed on a vehicle. Mazda noted that the markings may not be clearly visible after these operations have been performed on the replacement part. Therefore, Mazda suggested that the proposed requirement that replacement part markings be protected from damage during maintenance and repair be modified to require such protection "to the maximum extent possible".

NHTSA has not adopted this comment in this final rule. As noted above, many commenters at the public hearing stated that this theft prevention standard will

only be as effective as the replacement parts marking requirement. NHTSA concurs in that judgment. If the theft standard were to allow replacement part markings not to be clearly visible to investigators, those investigators would have no way of determining if the marking had been obliterated during normal maintenance and repair or if it had been obliterated by thieves. This would offer a loophole in the standard for the unscrupulous. Since NHTSA strongly believes no such loophole should exist, it did not adopt the Mazda comment.

VW commented likewise that replacement parts are shipped either unpainted or just primed, and must be painted and rustproofed by the entity that installs the part. VW stated that in some cases "the agency must recognize that it may not be possible to maintain the label." VW must recognize that it cannot certify compliance with this theft prevention standard for its replacement parts, unless it can certify that the marking of those parts will remain permanently attached to the part and will be clearly visible after normal dealer preparation of the replacement part, which includes painting and rustproofing. If VW cannot devise a method that will enable it to certify such compliance using labels, it will have to use some other means of marking those replacement parts, such as stamping or etching.

Both Saab and Mazda asked the agency to confirm that it was acceptable under the provisions of this theft standard for a manufacturer to mark all of its covered major parts with the replacement part markings. Those parts then used as original equipment parts would also be marked with the VIN for the vehicle on which they were used. It was asserted that these "dual markings" would greatly simplify the manufacturer's task and reduce its costs for complying with this standard.

NHTSA agrees that such dual markings would be simpler for vehicle manufacturers, but the agency cannot allow such dual markings under the theft prevention standard. Dual markings would give thieves the opportunity to present stolen original equipment parts as properly marked replacement parts. Once the original equipment part identification (the VIN) had been obliterated from those stolen parts, a legitimate replacement part marking would remain. Assuming that the obliteration of the VIN were performed reasonably proficiently, repair shops and investigators would have little reason to suspect that this part was anything other than a properly

identified replacement part. This would not serve the purpose of the Theft Act of "decreasing the ease with which certain stolen vehicles and their major parts can be fenced". H. Rept. at 2. To make this absolutely clear, this final rule incorporates a provision prohibiting manufacturers from marking a part both as an original equipment part and as a replacement part.

Saab also commented that replacement parts should only have to be marked while the high theft line the parts are designed to fit is in production. This suggestion has not been adopted. The replacement parts will be designed to fit vehicles which have been selected as high theft lines. All available evidence suggests that cars which are subject to high theft rates remain so for a significant period of time. If markings are not required on replacement parts after the manufacturer has ceased production of the corresponding high theft line, thieves could steal those cars and chop the cars into parts. The chop shops could devote their cunning and energy to obliterating the original equipment marking on those parts, and then sell the parts as replacement parts. Since replacement parts for these cars would no longer have to be marked by the manufacturer, the chop shops would not have to bother counterfeiting the replacement part marking. The absence of this marking would give less notice to both repair shops and investigators that the parts were, in fact, stolen. Allowing this would be inconsistent with the purposes of the Theft Act. Accordingly, it is not permitted under this final theft prevention standard. Once a line is selected as a high theft line, each covered major replacement part designed for use on that line must be identified as a replacement part. That requirement remains in effect as long as those replacement parts are produced.

With respect to the location of the replacement part markings, the NPRM proposed that those markings be placed in the same size target area as was proposed for original equipment parts (5 cm X 5 cm) and that this target area be 15 cm away from the target area for original equipment parts. The reasons for proposing the target area were the same two explained above for original equipment parts. Briefly repeated, a target area would alert an investigator as to precisely where he or she should examine the part for the marking and it would ensure that a thief could not obliterate a legitimate marking and place a counterfeit marking on top of the obliterated area, in an effort to hide the obliterated legitimate marking.

The comments on the proposed 5 cm X 5 cm target area for replacement parts were very similar to those for the same target area for original equipment parts, i.e., the area was too small. NHTSA is adopting a less restrictive target area which will achieve the same goals as the proposed target area, but do so in a less burdensome manner. As explained above, the vehicle manufacturers will now be required to designate a target area not to exceed 50 percent of the surface area on the surface for the original equipment parts to be marked with the VIN. Each of those vehicle manufacturers are also the major producers of replacement parts for their vehicles. Accordingly, in conjunction with the target area designations for original equipment parts, those manufacturers will also designate a target area for replacement parts.

There are two limitations on the designation of the target area for replacement parts, to ensure that there will be an adequate separation between the original equipment part markings and the replacement part markings. First, the target area for replacement parts may not exceed 25 percent of surface area on the surface of the part where the replacement marking will appear. If both the original equipment marking target area and the replacement part marking target area were 50 percent of the surface area of the part, and the target areas were on the same surface of the part, the boundaries of the two target areas would touch each other. This would not result in any significant separation of the target areas. Accordingly, one of the target areas must be less than 50 percent of the surface area of the part. NHTSA believes it is more appropriate to limit the size of the target area for replacement part marking. This is because replacement part marking will not be done on an assembled vehicle, but will be done on the individual part. This makes it easier to position the marking more precisely.

Second, the target area for replacement parts must be at least 10 cm at all points from the target area for original equipment parts. NHTSA believes it is vitally important that investigators be able to see the area in which a thief may have attempted to obliterate an identification marking. This would not be feasible if those thieves could remove an original equipment part label and then apply a replacement part label over the same area. Therefore, the agency has concluded that there must be an adequate separation of the areas in

which original equipment and replacement parts will be marked.

A 15 cm separation was proposed to ensure that, even if a manufacturer slightly missed the 5 cm X 5 cm target area, the investigators in the field would have a chance to examine the target area in which a marking may have been obliterated. In response to that proposed requirement, Chrysler commented that a 15 cm separation might eliminate locations for replacement parts marking which would be optimal for visibility or protection of the marking. Jaguar stated that the proposed 15 cm separation could prove unduly restrictive to manufacturers, without furthering the agency's purpose. Jaguar suggested that a 5 cm separation would serve the same purpose in a less restrictive manner.

NHTSA believes that the greatly enlarged target areas in this final rule respond to both these commenters' concerns. Moreover, the required separation has also been lessened to 10 cm in response to these concerns. A further reduction to Jaguar's suggested 5 cm would make it more difficult for investigators to quickly determine that a part was not marked within a designated target area, and would increase the chances for a thief to successfully hide the removal of a proper identification and the application of a counterfeit one. In NHTSA's judgment, the 10 cm separation reflects the best balance between its need to ensure adequate separation of the markings and its desire to give the manufacturers as much flexibility as possible in complying with this standard.

The Specialty Equipment Market Association and the Auto Internacional Association commented that this final rule ought to include a provision to allow replacement parts manufacturers to object to the target areas designated by the original vehicle manufacturer. No such provision is included in this rule, because NHTSA has concluded that such a provision is unnecessary. The covered major parts specified in this theft prevention standard do not include parts such as oil filters and air filters which are made by many manufacturers for a particular vehicle. The original vehicle manufacturers produce the majority of the covered major replacement parts, and most of those which are not produced by the original vehicle manufacturers are made by parties that have leased the original manufacturer's molds for those parts. Thus, the original vehicle manufacturers have no reason to select target areas for replacement parts marking that will make it difficult for them or their lessors

to properly mark the part. In fact, those manufacturers have every incentive to ensure that the target area will meet the performance criteria of this standard and allow easy access to the party applying the marking.

2. Cost Limitations of the Replacement Part Standard

Section 604(a)(2) of the Cost Savings Act limits the costs which may be imposed on replacement parts manufacturers by the marking requirements of this standard, in that those requirements "may not impose costs upon any manufacturer of major replacement parts to comply with such standard in excess of such reasonable lesser amount per major replacement part as the Secretary specifies in such standard." The NPRM noted the difference between this per part cost limitation and the specific \$15 per vehicle cost limitation for marking the original equipment parts. The agency believes these differing statutory requirements reflect the difference in economies of scale for original equipment parts manufacturers and replacement parts manufacturers. The amount specified in this standard for replacement parts would be adjusted for inflation in the same manner as the \$15 per car cost limitation.

The NPRM solicited comment on what "reasonable lesser amount" should be specified, and specifically asked for comments on levels of \$1 and \$5 per part. The Specialty Equipment Market Association and the Auto International Association suggested a complex formula for determining the reasonable lesser amount. They urged the agency to determine the relationship between \$15 and the price of the vehicle for which the parts are made. That percentage of \$15 should be adopted as the limit for all 14 replacement parts, and one-fourteenth of that number would be the maximum cost that could be added by the marking requirements for an individual part. For example, if a new vehicle sold for \$15,000, the \$15 cost limit would represent 0.1 percent of the cost of the vehicle. Under this suggested formula, the total cost for marking all 14 replacement parts would be limited to 1.5 cents. Each part could cost no more than 0.1 cent to mark.

The agency has not adopted this formula in this final rule. It would result in no replacement parts being marked, and would directly contradict the explicit requirements of, and intent underlying, the Theft Act. If this suggested formula were not adopted in the theft prevention standard, these commenters asked the agency not to specify any cost limit for marking

replacement parts. This course of action is not possible because section 604(a)(2) of the Cost Savings Act explicitly requires the agency to specify a cost limit for the marking of replacement parts in the theft prevention standard.

CHAT commented that the suggested \$5 limit for marking replacement parts seemed to be an excessive cost to impose on manufacturers. At the same time, CHAT said that the suggested \$1 level might be too restrictive for marking purposes, since these manufacturers would not have the economies of scale the vehicle manufacturers would have. CHAT stated that NHTSA should specify a cost limit of \$2 or \$3 for marking a replacement part. Ford stated its belief that a \$1 limit for marking a replacement part was reasonable. GM commented that manufacturers should not be required to incur costs of more than \$1 to mark a replacement part, and that the suggested \$5 limit per part was excessive.

The agency has reexamined this question in light of these comments. NHTSA has concluded that setting a cost limit of \$1 to mark replacement parts would be unreasonably restrictive. The statutory limit of \$15 to mark 14 covered parts on a vehicle in effect allows an average cost of \$1.07 per part. Setting a one dollar limit for the costs of marking replacement parts would require that it cost less to mark those parts than Congress allowed for original equipment parts. In fact, the cost of marking replacement parts will be greater than the costs of marking original equipment parts, because of the lesser economies of scale the replacement parts manufacturers experience. Further, some parts may cost more than others to mark because of individual characteristics, such as the geometry of the part and its ability to withstand stamping loads. A cost limit of \$1 per replacement part would force the agency to revise the standard to allow the manufacturers to mark these more costly parts for less than the cost limit. Accordingly, this limit has been rejected as unreasonably low.

As noted above, the agency believes that replacement parts marking is crucial if this standard is to be effective. The replacement parts markings required in this standard are exactly those suggested in the legislative history. NHTSA has concluded that a lessening of these markings would undermine the purpose of those markings, by making it simpler for thieves to falsely mark stolen parts as legitimate replacement parts. Because this standard is directed at very sophisticated criminal enterprises, it

must give investigators every opportunity to detect counterfeit markings. Fewer markings make it easier for a criminal to apply counterfeit markings which appear to be legitimate, and give investigators less of an opportunity to detect the counterfeit nature of those markings. Therefore, NHTSA believes it would be inconsistent with the intent of the Theft Act to specify a cost limit for these markings that could not be met by each replacement parts manufacturer.

As with the \$15 cost limit to mark the parts on a new vehicle, NHTSA has no authority to exempt a manufacturer or particular parts from the replacement parts marking requirement because of an inability to comply with these requirements by some reasonable means at a cost of this specified limit or less. If a replacement parts manufacturer can show that it is unable to reasonably comply with these markings requirements within such limit for any covered part, the marking requirements of the standard will have to be amended to permit each replacement parts manufacturer to mark each covered major replacement part for the specified limit.

The information currently available to the agency indicates that it could cost a low volume manufacturer or importer of replacement parts as much as \$3.96 to mark certain replacement parts. Accordingly, if the cost limit for marking replacement parts were set below this level, the requirements for such markings would have to be made less stringent, and NHTSA believes this would be inconsistent with the purpose of the Theft Act. To allow for possible error in this agency estimate, this final rule establishes a cost limit of five dollars (in 1984 dollars) for marking replacement parts.

NHTSA believes this amount is a "reasonable lesser amount" than \$15. The cost to vehicle manufacturers to mark these parts will be well under one dollar for each replacement part, and these manufacturers are the source of the vast majority of replacement parts. All available information to the agency indicates that the vehicle manufacturers will not approach this cost limit. As stated above, the limit is directed at the reasonable costs which will be incurred by the smallest manufacturers and importers. These replacement parts are generally chosen by vehicle owners because they cost significantly less than those same parts produced by the vehicle manufacturers and the large replacement parts manufacturers. A five dollar price increase for the replacement parts produced by the smallest

manufacturers and importers will not significantly reduce the demand for their products, because the major replacement parts covered by this standard are very expensive parts and usually have large retail price mark-ups. Further, the specialty cars for which most of the smaller entities produce major replacement parts generally cannot get parts from junk yards or other salvage operations. This leaves the parts manufacturer with a virtual monopoly on the replacement parts market.

Appendices Setting Forth Lines Selected as High Theft Lines and the Criteria Considered in Selecting High Theft Lines. The NPRM explained how the agency would select lines as high theft lines. Since then, NHTSA has published a final rule setting forth the procedures for selecting high theft lines from those lines introduced after January 1, 1983 (50 FR 3483; August 28, 1985) and theft data for lines introduced before January 1, 1983 (50 FR 18708; May 2, 1985, 50 FR 32871; August 15, 1985). The issues associated with those selections have been discussed at length in those notices and need not be repeated herein.

Appendix A in the NPRM was proposed simply to create a place for listing the lines which would be selected as high theft lines. No commenters suggested any reasons for not including such an appendix to this theft prevention standard. Accordingly, it is included in this final standard.

Proposed Appendix B listed the criteria the agency would consider in limiting to 14 the number of lines introduced by an individual manufacturer before the effective date of the theft prevention standard that may be selected as high theft lines because of actual or likely high theft rates. This limitation is set forth in section 603(a)(3) of the Cost Savings Act. As announced in the August 28, 1985 notice establishing the final rule for the selection of high theft lines, one of the proposed criteria for that appendix has not been adopted in this theft prevention standard. It was proposed that a manufacturer's plans for installation of an original equipment anti-theft device in a line would be considered as a factor militating against choosing that line as one of the 14 to be subject to this theft prevention standard. As explained at 50 FR 34834-34835, NHTSA has concluded that it would be inappropriate to consider such plans to lessen the possibility of a line being chosen as one of the 14 subject to the standard. All the other parts of

Appendix B have been adopted as proposed in the NRPM.

Proposed Appendix C contained criteria for selecting likely high theft lines from those lines introduced after January 1, 1983. Since no commenters objected to these criteria, they are adopted as proposed.

Certification of Compliance with the Theft Prevention Standard. Section 606(c)(1) of the Cost Savings Act [15 U.S.C. 2026(c)(1)] provides that "[e]very manufacturer of a motor vehicle subject to the standard * * * and every manufacturer of any major replacement part subject to such standard, shall furnish at the time of delivery of such vehicle or part a certification that such vehicle or replacement part conforms to the applicable motor vehicle theft prevention standard." It further provides that NHTSA may issue rules prescribing the manner and form of such certification.

Section 607(a) of the Cost Savings Act prohibits any person from importing into the United States any motor vehicle or part covered by this standard, unless it is in conformity with the standard. The House Committee Report states that "[a]ny motor vehicle not in compliance will be refused admission into the United States." H. Rept. at 18. On that same page of the report, NHTSA is directed to take "into consideration its present certification practices in the case of safety" in determining the method and form of certification for the theft prevention standard.

A. Who May Certify

As noted above, Title VI of the Cost Savings Act requires every "manufacturer" to certify that its motor vehicles and/or covered major parts comply with the requirements of this standard. The term manufacturer is defined in section 2(7) of the Cost Savings Act [15 U.S.C. 1901(7)] as "any person engaged in the manufacturing or assembling of passenger motor vehicles or passenger motor vehicle equipment including any person importing motor vehicles or motor vehicle equipment for resale." Because of concerns about maintaining the security of marking technologies and about enforcement of this standard, the question which arises is whether each and every "manufacturer", as that term is defined in section 2(7), should be permitted to certify that a motor vehicle or part complies with the requirements of this theft prevention standard.

This question arises primarily in connection with "direct importers". These direct importers are individuals and commercial enterprises which obtain foreign cars not originally

manufactured for sale in the United States, bring them into this country, and modify them so that they can be certified as being in compliance with the U.S. vehicle safety, emissions, and bumper standards. Under the Federal statutes mandating the vehicle safety, emissions, and bumper standards (15 U.S.C. 1397(b)(3), 42 U.S.C. 7522(b)(2), and 15 U.S.C. 1916(b)(3)) and the implementing regulations (19 CFR 12.73 and 12.80), vehicles not in compliance with those standards may be brought into this country under bond. The bond is released when a statement is submitted showing that the necessary modifications to achieve compliance with those standards have been made. However, Title VI of the Cost Savings Act does not specifically provide for the importation of noncomplying vehicles under bond. Therefore, all vehicles must be certified as complying with the requirements of this theft prevention standard before they are "imported".

The NPRM proposed to limit those persons who would be authorized to certify compliance with the theft prevention standard to a narrower subset of the universe of "manufacturers". Instead of allowing all persons who are "manufacturers" within the meaning of section 2(7) (both direct importers and original manufacturers of the vehicles and parts) to certify compliance with the requirements of the theft prevention standard, the NPRM proposed to limit access to marking technology by providing that only original manufacturers of the vehicles and parts would be allowed to certify such compliance.

The language of Title VI and its legislative history neither expressly endorses nor repudiates the definition of "manufacturer" in section 2(7). On the one hand, certain portions of Title VI seem to indicate that Congress did not contemplate that direct imports would be involved in complying with the theft prevention standard. Section 602(a)(1) provides that the standard applies to "the covered major parts which are installed by manufacturers into passenger motor vehicles," and 602(d)(1) refers to "major parts installed by the motor vehicle manufacturer." (Emphasis added to both). Direct importers may alter, but do not install major parts. Hence, Congress did not seem to be specifically referring to direct importers as manufacturers for purposes of the Theft Act. Moreover, Senator Percy, the original sponsor of the Senate version of the anti-theft bill, stated during the floor debate that, "[u]nder the bill, motor vehicle manufacturers would be required to apply these numbers before

each vehicle leaves the factory." 130 Cong. Rec. S13585, Oct. 4, 1984. This statement could be viewed as support for the concept of limiting certification to original manufacturers, since direct importers could not apply numbers before the vehicle leaves the factory.

Additionally, Congress did not explicitly provide for importing noncomplying vehicles under bond, as it had done for the safety, emissions, and bumper statutes. Earlier versions of the legislation which became the Theft Act contained bonding provisions which were dropped before the law's enactment. The absence of express authority to "import" noncomplying vehicles, particularly when compared with the presence of such authority under the other statutes requiring Federal vehicle standards, might be said to suggest that Congress intended to absolutely prohibit the importation of noncomplying vehicles.

On the other hand, Congress amended the general definitions in section 2 of the Cost Savings Act (15 U.S.C. 1901) so that those definitions apply for the purpose of the Cost Savings Act ("except title V and except as provided in section 601 of this Act"). (Emphasis added). In section 601, Congress set forth the definitions which applied solely for the purposes of the Theft Act (Title VI of the Cost Savings Act). However, it did not amend the definition of "manufacturer" set forth in section 2 of the Cost Savings Act. Had Congress intended to change the definition of manufacturer to exclude direct importers, it would presumably have done so explicitly. This seems particularly true when Congress did, in section 601, change the definition of "passenger motor vehicle" set forth in section 2 for the purposes of Title VI of the Cost Savings Act.

Further, the legislative history explicitly stated that the requirements of the Theft Act were designed to curb motor vehicle thefts "while trying to minimize regulation of the domestic and foreign motor vehicle manufacturing industry, including the aftermarket motor vehicle industry." H. Rept. at 2. It would appear to be inconsistent with this stated goal for the Theft Act requirements to force a small, but recognized, portion of the industry out of that business.

Since the statutory requirements and legislative history appear to give conflicting signals as to the underlying Congressional position on whether direct importers should be allowed to certify compliance with the requirements of this theft prevention standard, the agency had to determine whether the policy goals underlying Congressional passage of the Theft Act

would be better served by allowing or prohibiting certification of compliance by direct importers. In the NPRM, the agency tentatively concluded that such certification would be inconsistent with the law enforcement goals of the Theft Act, and proposed to limit certification of compliance with the requirements of this theft prevention standard to original vehicle manufacturers and major replacement part manufacturers.

This proposal was explained at length at 50 FR 19738-19740, and need not be repeated herein. However, NHTSA was sensitive to the economic consequences for direct importers if the theft prevention standard were to prevent their importation of high theft lines, by barring them from certifying the compliance of those vehicles.

Accordingly, the NPRM asked for comments on whether there was some scheme consistent with the Theft Act that would permit direct importers to certify compliance with this theft prevention standard, without impeding the enforcement of this standard.

In response to this proposal and request for comments, NHTSA received numerous and voluminous comments on this proposed limitation. Many form letters were submitted by direct importers, opposing the proposed limitation, and by law enforcement groups supporting the proposed limitation.

Original vehicle manufacturers unanimously supported the proposed limitation, and the strongest supporters of that proposal were the foreign manufacturers. These comments amplified the practical enforcement difficulties and the substantially reduced effectiveness of the marking requirements which they believed would ensue if direct importers were allowed to mark vehicles. CHAT commented that the security problems associated with the marking technologies would expand considerably if each direct importer had access to those technologies, and supported the proposed limitation. The National Automobile Dealers Association agreed with the proposed limitation, and emphasized the "serious problems for franchised dealers" which have arisen in connection with vehicles imported by the direct importers.

An association of direct importers, the Automobile Importers Compliance Association, strongly opposed the proposed limitation, arguing that if Congress had intended to limit certification authority to original manufacturers, it would have done so explicitly. That group suggested what it felt were a number of ways in which direct importers could be allowed to

certify compliance with the theft prevention standard without sacrificing the law enforcement objectives of that standard. These included controlled labeling, in which only one party would obtain the labels to be affixed to direct imports and would distribute these labels to the direct importers once the direct importer had shown proper credentials for the labels. Alternatively, that group suggested that all direct import vehicles be exempted from the marking requirements of this standard, on condition that the vehicles all be equipped with original equipment anti-theft devices. This suggestion arose from the agency's authority to exempt lines from the marking requirements, under section 605(a)(1) of the Cost Savings Act, if the agency determines that the original equipment anti-theft devices on those lines are likely to be as effective as parts marking in reducing and deterring vehicle thefts. Finally, this group indicated its belief that "NHTSA has inherent authority to establish limited exemptions from (the theft prevention standard's) requirements to assure reasonableness and practicability". The group urged NHTSA to use this inherent authority to exempt direct importer's vehicles from the requirements of the theft prevention standard.

The Justice Department (DOJ) also objected to the proposal to allow only original manufacturers to certify compliance with the theft prevention standard. DOJ stated its belief that the benefits associated with prohibiting direct importers from marking vehicles would be significantly outweighed by the consumer costs resulting from such a prohibition. Absent a clear Congressional directive to eliminate certification by direct importers, and in consideration of the "significant negative economic impact" which would be associated with NHTSA's proposed limitation of certification authority, DOJ suggested that NHTSA should not adopt its proposed limitation.

DOJ agreed with NHTSA that access to marking technologies should be carefully controlled, in order to serve the law enforcement objectives of the Theft Act. DOJ observed that it may be better from a law enforcement standpoint if the markings by direct importers were done in the U.S., since such marking operations could be better monitored. Accordingly, DOJ stated that NHTSA should use its administrative discretion to admit non-complying vehicles under bond, and allow the theft prevention standard's markings to be done at the same time as the modification of the vehicle so that it

satisfies the requirements of the vehicle safety and emissions standards. To ensure the effectiveness of the theft prevention standard, DOJ suggested that four additional limitations be placed on direct importers for purposes of the theft prevention standard. These were:

- (1) All direct importers would be required to register with NHTSA;
- (2) Direct importers must use a numbering system for parts that will uniquely identify both the vehicle parts and the importer. They suggested the use of the Euro-VIN with a prefix code and logo to identify the direct importer;
- (3) Direct importers should not be allowed to use labels, since that might present special security problems; and
- (4) Direct importers would be required to maintain the records required of all manufacturers under section 606(a) of the Cost Savings Act.

With these additional requirements, DOJ believed that the theft prevention standard would be effective for law enforcement purposes, while not banning direct imports of high theft lines.

In response to these comments, NHTSA has thoroughly reexamined this subject. The agency has concluded that this regulation should not prohibit direct imports of vehicles. Accordingly, this final rule allows all entities which are "manufacturers" within the meaning of the Cost Savings Act to certify compliance with the requirements of this standard. This is consistent with existing practice under the Safety Act, the Clean Air Act, and Title I of the Cost Savings Act.

However, NHTSA also believes that the rulemaking record supports its policy concerns about the security of the marking technologies and the enforcement of this standard. The lengthy discussion in the NPRM shows why the issue of direct imports poses special problems for achieving the law enforcement purposes of the Theft Act. Accordingly, this theft prevention standard sets forth the following special provisions for the purposes of certification of compliance by direct importers.

1. Direct Imports Must Be Marked With the Euro-VIN

As noted above, the NCIC computer system for recording and tracking stolen vehicles is set up so that it requires the entry of a full 17-character U.S. VIN. Thus, at first glance, it would seem to be most useful for law enforcement purposes if these vehicles were assigned a U.S. VIN. However, the NPRM sought comments on the use of Euro-VINs for making direct imports subject to the requirements of this theft prevention

standard, because of the problems which might be associated with direct importers assigning U.S. VINs to these vehicles.

The NATB stated that there are reported instances under the current VIN regulations where a direct importer has assigned and affixed new 17-character U.S. type VINs to vehicles with Euro-VINs. "Homemade" VINs give all appearances of having been actually assigned by the vehicle manufacturer, but were actually assigned by the direct importer, without identifying the direct importer. Such "homemade" VINs assign the proper characters to accurately identify the actual manufacturer of the vehicle. Most even include an accurate check-digit, so it is not apparent that they are "homemade". However, according to NATB, such "homemade" VINs present law enforcement officers with the situation where a vehicle cannot be traced (or its production verified) either to the original manufacturer or to the direct importer. This substantially negates one of the main purposes of the VIN. NATB concluded its comment on this point by repeating its preference for a full 17-character VIN, but stated that vehicles with accurate Euro-VINs could be traced to the actual manufacturer and have the production verified, albeit with additional effort and time delays. Since this could not be done with "homemade" U.S. VINs, NATB urged the agency to require the use of Euro-VINs by direct importers.

NHTSA is persuaded by this comment. While the NCIC tracking system could more readily handle full 17-character VINs, the usefulness of those VINs would be substantially diminished if they do not allow law enforcement personnel to trace the vehicle to its manufacturer. The Euro-VINs are more difficult for the NCIC to enter, but will serve to trace the vehicle to its manufacturer. Further, if the agency were to permit or require assigning U.S. VINs by direct importers, such "homemade" VINs would not be recorded by the manufacturer as assigned. This could result in a situation where a VIN was assigned to two different vehicles (once by the vehicle manufacturer and once by the direct importer). Duplicative VINs would completely fail to serve the purpose of providing a unique identifier for a vehicle for 30 years. Therefore, NHTSA has determined that vehicles imported by direct importers should be marked with the original Euro-VIN assigned to the vehicle by the original manufacturer.

2. Direct Imports Must Have the Markings Inscribed on the Parts

The 3M Corporation's representatives have repeatedly expressed their concerns that producers of security labeling technology, such as 3M, are able to guarantee the usefulness of their product *only when the distribution of the product can be tightly controlled*. That corporation has stated that the security labeling system's integrity and uniqueness will be easily compromised if they are required to make their security tape more widely available in the marketplace.

Because of these concerns, DOJ commented that direct importers should not be permitted to use labels to mark the parts of their vehicles. According to those comments, "It is reasonable to impose some additional costs on importers to prevent the security risks perceived in a wide availability of labeling technology."

The Automobile Importers Compliance Association acknowledged in its comments that it was necessary to reduce the number of parties in possession of all or some part of the security marking technologies, and suggested that a procedure be set up whereby one party would secure and distribute labels to direct importers. That group suggested that either it or the Department of Transportation should be the party that secures and distributes those labels.

NHTSA has not adopted the suggested procedure for having one party secure and distribute labels to all direct importers. It would be inappropriate for the Department to perform this function, for the reasons stated in the NPRM. Briefly repeated, such a procedure would differ radically from practices under the Safety Act, and the legislative history of the Theft Act directs NHTSA, when establishing procedures for certification, to "take into consideration its present certification practices in the case of safety." H. Rept. at 18. No resources are available for establishing such a procedure in the agency's budget, and the agency does not believe it should seek an increase in its budget to allow it to become involved in the certification of vehicles.

The agency also believes it would be inappropriate to designate the Automobile Importers Compliance Association, or any other group of direct importers, as the sole source of labels for direct importers' vehicles. By choosing a single group as the source of labels for all direct importers, the agency would give it an unintended "government sanction" as the official

representative for all direct importers. Conversely, it would have the effect of denigrating the standing of any other direct importers' groups.

In view of these potential problems with designating some group outside of the Department of Transportation as the sole source for labels for direct importers' vehicles, NHTSA has not adopted this suggested approach.

3M has specifically stated that the usefulness of their labels can be guaranteed only when the distribution is tightly controlled. If a chop shop or some other criminal enterprise were to make a direct import of only one vehicle and were able to obtain an excess supply of security labels, the integrity of the labels would be seriously compromised. If a number of criminal enterprises were to do this, the value of the labels would be even further diminished. The information currently available to the agency suggests that nearly all original manufacturers intend to comply with the parts marking requirements of this theft prevention standard by using those security labels. If criminal enterprises were able to pose as legitimate direct importers and readily obtain access to these labels, the security and effectiveness of these labels on all imported vehicles subject to this theft prevention standard would be seriously compromised, or perhaps rendered useless. This theft prevention standard cannot permit such a result.

Under general legal principles, the Theft Act must be interpreted so as to give NHTSA implied authority to set marking performance requirements that are essential to achieve the purposes of the Theft Act. NHTSA is well aware of the directive in the legislative history that this is to be a performance standard, and that the agency is to establish the "tests or general criteria which the identification must meet, but not how it is to be inscribed or affixed". H. Rept. at 10. Clearly each "manufacturer" was to be allowed to choose how to comply with the requirements of this theft prevention standard.

However, the agency believes that the requirement for a performance standard, read in the context of the Theft Act, means that NHTSA must draft its requirements as broadly as possible, but may also be relatively specific if necessary to ensure that the Theft Act achieves its purposes. The Vehicle Safety Act, on which much of this Act is modeled, contains a similar requirement for performance requirements. The agency has repeatedly interpreted the Safety Act in the manner set forth above.

Moreover, there is a familiar principle of statutory interpretation called "restrictive interpretation". That principle is explained thusly: "When the natural or literal meaning of statutory language embraces applications which would not serve the policy or purpose for which the statute was enacted or help to remedy the mischief at which it was aimed, the courts may construe it restrictively in order not to give it an effect beyond its equity or spirit * * *". A restricted interpretation is usually applied when the effect of a literal interpretation will make for injustice and absurdity * * *". A. Sutherland, *Statutes and Statutory Construction*, § 54.06 (4th ed. C.D. Sands 1973). NHTSA has concluded that the principles of restrictive interpretation must be applied to this performance standard requirement as it applies to direct importers.

According to the legislative history of the Theft Act, it is:

a comprehensive package of proposals designed to curb the theft of motor vehicles by preventing thefts and decreasing the ease with which certain stolen vehicles and their major parts can be fenced, while trying to minimize regulation of the domestic and foreign motor vehicle manufacturing industry, including the aftermarket motor vehicle industry. It also gives law enforcement officials at all levels of government the much-needed prosecutory tools to crack criminal theft rings and related racketeering activities. H. Rept. at 2.

These are truly the essential purposes of the Theft Act. If criminal elements can readily compromise the security and effectiveness of labels, these essential purposes will not be achieved. There is no reasonable basis for supposing that Congress intended the agency to require the original automobile manufacturers to undertake the permanent identification of the covered major parts on all their high theft lines, but also to permit the security and effectiveness of such markings to be readily compromised.

After considering this analysis, NHTSA believes that it has authority to require direct importers to mark their vehicles subject to this theft prevention standard by inscribing the markings on the covered major parts, and not allowing direct importers to affix the markings on the covered major parts by means of labels. There are no security concerns related to the current stamping or etching technologies, because these are already widely available. Hence, allowing direct importers to use such technologies will not reduce the effectiveness of such markings.

This final rule does not adopt DOJ's suggestion that direct importers be required to mark their vehicles with a

prefix code for the part and the importer's logo, along with the Euro-VIN. Section 602(d)(1)(A) provides that the theft prevention standard may not require original equipment parts to have more than a single identification. In the case of covered major parts on vehicles imported by direct importers, NHTSA believes that the most useful single identification will be the Euro-VIN, as explained above, and that is what is required in this standard.

The DOJ further suggested that direct importers be required to stamp those covered major parts with "positive identification" characters. The agency has no basis for mandating the use of one specific means of inscribing the markings made by direct importers. NHTSA has no data which show that stamping with "positive identification" characters will produce markings which are more difficult to alter or more readily legible for investigators than markings produced by laser etching, sandblasting, stamping with different characters, and so forth. If there were such evidence, it would perhaps be more appropriate to amend the performance requirements for the markings on all replacement parts, so that all such parts' markings would offer these benefits. Accordingly, this theft prevention standard allows direct importers to use any means of inscribing markings into the covered major parts, provided that those markings comply with the applicable performance requirements.

3. The Required Markings Must Be Inscribed Before the Vehicle or Parts are "Imported Into the United States"

Both DOJ and the Automobile Importers Compliance Association asserted in their comments that NHTSA has authority under the Theft Act to allow non-complying vehicles to be imported under bond and marked so as to comply with the requirements of this theft prevention standard. These comments were made in spite of the broad prohibition of section 607(a)(1) that, "No person shall * * * import into the United States any motor vehicle subject to the [theft prevention standard], or any major replacement part subject to such standard, which is manufactured on or after the date the [theft prevention standard] takes effect under this title for such vehicle or major replacement parts unless it is in conformity with such standard." The only exception to this broad prohibition expressed in the Theft Act is in section 607(b), which provides that section 607(a)(1) "shall not apply to any person who establishes that he did not have reason to know in the exercise of due

care that the vehicle or replacement part is not in conformity with an applicable theft prevention standard."

The agency concludes that it has no authority to adopt a program to admit noncomplying vehicles under bond, for essentially the same reasons as it reached that tentative conclusion in the NPRM. Congress expressly granted the agency such authority in Title I of the Cost Savings Act (15 U.S.C. 1916) and in the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1397), but did not grant such authority in Title VI of the Cost Savings Act, relating to the theft prevention standard. The legislative history of the Theft Act referred to the agency's procedures for certification under the National Traffic and Motor Vehicle Safety Act, which contains an express provision authorizing the agency to admit non-complying vehicles under bond. Moreover, earlier versions of the bill which ultimately became the Theft Act contained bonding provisions, but those provisions were dropped from the final bill. For these reasons, NHTSA concludes that Congress did not intend bonding procedures to be used in connection with this standard.

NHTSA would like to emphasize that it is unaware of any policy reason why a program to admit noncomplying vehicles under bond, which is appropriate in the case of the National Traffic and Motor Vehicle Safety Act, the Clean Air Act, and Title I of the Cost Savings Act, should not be permitted under the Theft Act. The agency cannot dispute DOJ's comment that: "If an unsafe or polluting car can be admitted under bond, it is hard to find a public policy justification for irrevocably banning a car lacking \$15 theft prevention markings." It would be simpler and more efficient for the direct importers if they were allowed to have the required theft prevention markings inscribed in the U.S. at the same time as the vehicle was being modified to comply with the Federal bumper, safety and emissions standards. Prohibiting theft prevention markings from being inscribed in the U.S. could encourage more of the required modifications work, with the associated jobs, to be shifted overseas. Even without considering the negative effects that this possible shift could have on U.S. employment and balance of trade, there would be a small positive impact on U.S. employment and balance of trade if the necessary markings were inscribed after the vehicle was admitted into the U.S. under bond. Notwithstanding these advantages, the agency is constrained from implementing any bonding program by the Theft Act, as explained above.

The Automobile Importers Compliance Association also raised the issue of when a vehicle is imported into the United States. That group asserted that vehicles admitted under bond are not "imported" until that bond has been released. To resolve this issue, NHTSA obtained a legal opinion from the Chief Counsel of the United States Customs Service as to when a vehicle is considered "imported" into the United States. A copy of this letter is available in the docket.

The Customs Service stated that, as a general rule, a vehicle is imported as soon as it enters the customs territory of the United States with the intent by the importer that it remain within the customs territory. Hence, vehicles imported under bond are imported before that bond is liquidated.

The Automobile Importers Compliance Association further commented that vehicles entering foreign-trade zones in the United States would not be "imported" until the vehicles leave such a zone to enter the customs territory of the United States. Foreign-trade zones may be established in or adjacent to ports of entry under the jurisdiction of the United States, and are not deemed to be within the customs territory of the United States. See 19 U.S.C. 81a *et seq.* and 19 CFR Part 146. Under this reasoning, the commenter stated its belief that direct importers could, consistent with the provisions of section 607 of the Cost Savings Act (15 U.S.C. 2027), bring vehicles directly into foreign-trade zones, make the necessary markings while the vehicles were inside the zones, and then formally bring the vehicles into the customs territory of the United States.

In a separate opinion from the Customs Service, also available in the public docket, that agency stated that "this suggestion on the part of the importers is clearly incorrect. Foreign merchandise brought into a foreign-trade zone in the United States is indeed imported for Customs purposes." Accordingly, the required markings must be inscribed onto directly imported vehicles before those vehicles are brought into the customs territory of the United States or a foreign-trade zone.

The U.S. Customs Service will be the agency enforcing the Theft Act's prohibition against importing noncomplying vehicles and parts, just as that agency enforces all other statutory prohibitions against importing noncomplying vehicles and items of motor vehicle equipment. Therefore, any further questions about when a product is "imported" into the United States should be addressed to the U.S. Customs

Service. Their address is: Office of the Chief Counsel, United States Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229.

NHTSA has not adopted the Automobile Importers Compliance Association suggestions that all direct imports be excluded from the requirements of this standard on condition that they install an original equipment anti-theft device or that all direct imports be excluded. The exemption from the marking requirements of this standard for vehicles equipped with original equipment anti-theft devices is contained in section 605 of the Cost Savings Act (15 U.S.C. 2025), and requires the agency to make a determination that such anti-theft device "is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the requirements of this standard." NHTSA has no basis for making such a determination for all anti-theft devices on all direct imports. Absent some basis for making the requisite determination, NHTSA has no authority to exempt those vehicles under section 605 of the Cost Savings Act.

With respect to the suggestion that all direct imports be excluded from the theft prevention standard, NHTSA has no authority to exempt vehicles except under section 605 of the Cost Savings Act. Although it was suggested that the agency has "inherent authority to establish limited exemptions from its requirements", no authority was cited for the suggestion. NHTSA believes that when Congress explicitly provides one basis for exempting vehicles from the requirements of this theft prevention standard, as it did in section 605 of the Cost Savings Act, the expression excludes any other bases for exempting vehicles. The application of the legal principle, "*Expressio unius est exclusio alterius*" is as apt here as it was when NHTSA considered Ferrari's request that low volume manufacturer's vehicles be exempted from the requirements of this standard, as set forth above in this preamble.

B. Manner of Certification

1. Vehicles Subject to the Theft Prevention Standard

The NPRM proposed a simple amendment to the certification procedures applicable under the Safety Act. At present, the Safety Act requires manufacturers to affix a permanent plate or label to each vehicle providing a number of items of information, including the following statement: "This vehicle conforms to all applicable

Federal motor vehicle safety standards in effect on the date of manufacture shown above." For all passenger cars manufactured on or after September 1, 1978, the phrase "and bumper" is required to appear in the above statement immediately following the word "safety".

The NPRM proposed that, in the case of passenger cars manufactured on or after the effective date of the theft prevention standard and subject to the requirements of this standard, the expression "bumper, and theft prevention" be substituted in the statement immediately following the word "safety". Ford commented that the proposal should be revised, because it would require separate certification labels for cars subject to the theft prevention standard and cars not subject to this standard. Ford stated that separate certifications would "cause disruption of the assembly plant process", particularly in a plant which produced some lines subject to the standard and others which were not. Ford concluded this comment by noting that the statement that the vehicle conforms to all "applicable" theft prevention standards would ensure that it was accurate in the case of vehicles not subject to this standard.

NHTSA did not intend to require separate certifications for passenger cars, and has adopted Ford's comment for the reasons stated in that comment.

As a related matter, VW, Mazda, and Saab noted that a few of their vehicles are damaged so badly in shipment that a major part may be among those that need to be replaced before the vehicles are offered for sale to the public. The commenters asked if the manufacturer was required to replace the damaged part with a part marked with the VIN, as is required for original equipment parts, or if the dealer could replace the part with a replacement part. The commenters noted the certification difficulties they would have if a VIN marking were required on the replacement part. Mazda further commented that if those VIN markings were required, it would have to provide each of its dealers with the labeling technology.

Section 606(c)(1) of the Cost Savings Act requires that "every manufacturer of a motor vehicle subject to the [theft prevention standard] * * * shall furnish * * * a certification that such vehicle conforms to the applicable motor vehicle theft prevention standard. Such certification shall accompany such vehicle * * * until delivery to the first purchaser."

This latter sentence is consistent with the position NHTSA has taken for purposes of the Safety Act; i.e., it is not sufficient for a vehicle to satisfy the applicable safety standards at the time it leaves the assembly line. Instead, the manufacturer must certify that the vehicle satisfies all applicable safety standards at the time it is delivered to the first purchaser.

However, NHTSA does not understand these commenters to be suggesting that this theft prevention standard should permit new vehicles to be delivered which do not comply with this standard; i.e., with unmarked covered major parts. It is implicit in these comments that all vehicles must comply with this theft prevention standard. The question, however, is whether all parts of new vehicles must comply with the vehicle standard (marked with the VIN) at the time of delivery to the first purchaser, or whether some parts of the new vehicle may comply with the replacement part standard (marked with the letter "R" and the manufacturer's logo) at the time of delivery to the first purchaser.

Section 606(c)(1) specifies that the vehicle manufacturer must certify that the vehicle complies with the vehicle standard (all covered major parts marked with the VIN) "at the time of delivery of such vehicle". This requirement leaves two questions concerning the manufacturer's certification to be resolved:

(1) What is the "time of delivery"?; and

(2) The "delivery" to whom?

Neither the language of section 606 nor its legislative history makes clear the answers to these questions. However, the legislative history does specify that: "The method and form of certification shall be prescribed by the DOT by rule, taking into consideration its present certification practices in the case of safety." H. Rept. at 18. Section 114 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1403) states that: "Every manufacturer or distributor of a motor vehicle or motor vehicle equipment shall furnish to the distributor or dealer at the time of delivery of such vehicle or equipment by such manufacturer or distributor the certification that each such vehicle or item of motor vehicle equipment conforms to all applicable Federal motor vehicle safety standards." This certification practice with respect to the Safety Act suggests that Congress was referring to a delivery to the dealer or distributor as the point when a certification must be made by the vehicle manufacturer.

That conclusion is reinforced by section 606(c)(1)'s reference to "delivery to the first purchaser" in the next sentence. Had Congress intended to refer to delivery to the first purchaser in both instances, it would presumably have used the same phrase. Since it did not refer to "delivery to the first purchaser" as the point when the vehicle manufacturer must certify that the vehicle complies with this theft prevention standard, Congress must have intended that the "delivery" in question be that to a dealer or distributor. This is because there are no other parties to whom the manufacturer could be said to deliver a vehicle. Accordingly, NHTSA has determined that the delivery referred to in the first sentence of section 606(c)(1) is a delivery by a vehicle or replacement parts manufacturer to a dealer or distributor.

This determination means that the vehicle manufacturer satisfies its certification responsibilities under the Theft Act when it delivers to a dealer or distributor a vehicle with all covered major parts marked with the VIN and conforming to the performance requirements set forth for those markings. Thus, a manufacturer will not be subject to civil penalties under section 607(a)(4)(B), which prohibits the issuance of false or misleading certifications of compliance, if it delivers such a vehicle to a distributor or dealer. However, as noted above, section 606(c)(1) of the Cost Savings Act makes the vehicle manufacturer responsible for delivering to the first purchaser a vehicle that *complies* with the applicable requirements of this theft prevention standard. Therefore, a manufacturer that delivers a complying vehicle to a dealer or distributor may be subject to civil penalties under section 607(a)(1), which prohibits the manufacture or sale of a noncomplying vehicle, if the vehicle does not comply with the theft standard when it is delivered to the first purchaser. In such an instance, the manufacturer could assert the defense set forth in section 607(b) that it did not have reason to know in the exercise of due care that the vehicle was not in conformity with this standard. If some person actually altered or obliterated the markings, such person would have violated section 201 of the Theft Act (18 U.S.C. 511).

This leaves open the question of what the time of delivery of a vehicle is, for the purposes of the Theft Act. NHTSA has not specifically addressed the "time of delivery" of a vehicle for the purposes of the Safety Act, so there is no general practice for the agency to consider.

Absent clear legislative guidance or any clearly established practice under the Safety Act, the agency must examine other sources and consider the purposes of the Theft Act to determine what the "time of delivery" means under the Theft Act.

Delivery is a concept used for commercial transactions, and has been defined in the Uniform Commercial Code (U.C.C.). The U.C.C. has been adopted in whole or in part by all 50 states and the District of Columbia. NHTSA believes that the generally accepted definition of "delivery", as set forth in the U.C.C., is a useful indicator of what Congress intended when it used that term in section 606 of the Theft Act.

The rule under the Uniform Commercial Code is that when a seller ships goods by carrier, the delivery occurs when the goods are delivered by the seller to the carrier, unless the contract requires the seller to deliver the goods to the purchaser at a particular destination. U.C.C. section 2-504 and section 2-509 (1977). If this rule were applied in the case of a vehicle, the delivery to the dealer or distributor would occur when the manufacturer shipped the vehicle, unless the contract specifies delivery occurs when the vehicle is tendered to the dealer. In the interests of ease of administration, NHTSA believes it is appropriate to define "delivery" so that it occurs at the same point in any given transaction. It would be unwise policy and an onerous burden on the agency and the regulated parties if the agency were forced to examine the contractual terms between every manufacturer and each of its dealers and distributors to determine when "delivery" occurs in each case. Therefore, NHTSA has concluded that, for the purposes of this theft prevention standard, delivery occurs when the vehicle manufacturer delivers the vehicle to a shipper to be transported to a dealer or distributor. As noted above, this is the general rule under the U.C.C.

In practical terms, this means that, if a vehicle is so badly damaged that a covered major part needs to be replaced before the manufacturer has delivered the vehicle to the shipper, the vehicle manufacturer will have to mark a part with the VIN of that vehicle and install that part before delivering the vehicle to a dealer or distributor. If, on the other hand, a vehicle is so badly damaged after the manufacturer has delivered a properly marked and certified vehicle to the shipper that a covered major part needs to be replaced before the first sale of the vehicle for purposes other than resale, the dealer or distributor may install a replacement part on the vehicle.

The replacement part must comply with the applicable requirements for replacement parts, and need not have the VIN marked on it, as would be necessary if it were subject to the original equipment part requirements.

The certification which the first purchaser of the vehicle must receive, pursuant to section 606(c)(1), will indicate that the vehicle conforms to all applicable Federal theft prevention standards. This statement will not be misleading, because the undamaged original equipment parts must comply with the requirements applicable to original equipment parts, while the substituted replacement parts must comply with the requirements applicable to replacement parts.

NHTSA believes that this definition of "delivery" is the only one consistent with the purposes of the Theft Act to require markings of vehicle parts while imposing nominal burdens on the motor vehicle manufacturing industry. The agency recognizes that replacement parts installed on vehicles will be particularly attractive to thieves, since they can remove that part from the vehicle and sell it as a legitimate replacement part. However, vehicles are very infrequently damaged so badly before sale to the public that a major part would need to be replaced. If a major part were replaced with a replacement part, thieves will not be alerted to the fact that the vehicle has only 13 parts marked with the VIN and one marked with an "R" and the manufacturer's logo. Even if a thief were to learn this fact, the 13 marked parts would still show that a vehicle had been stolen by that person.

On the other hand, had the agency concluded that delivery to a dealer or distributor occurs when the dealer or distributor takes physical possession of the vehicle, enormous burdens would result for the dealers and distributors. Section 607(a)(1) of the Cost Savings Act specifies that no person shall sell or offer for sale a vehicle subject to this theft prevention standard that does not conform to this standard. Accordingly, dealers and distributors would have to hold the vehicle until the vehicle manufacturer had marked a part with the vehicle's VIN and shipped the part to the dealer or distributor. This would create a financial burden for the dealer or distributor holding the vehicle, since it would be paying interest on the vehicle from the date it received the vehicle, but could not offer to sell the vehicle until it had received and installed a properly marked part from the manufacturer. It would also create a burden on the manufacturer to produce

one part not marked as a replacement part, label that part with the proper VIN, and ship the part to the dealer or distributor.

NHTSA would like to note that Mazda's comment that it would have to provide its dealers with labels and marking technology is incorrect. The Theft Act places the burden of marking the parts exclusively on the manufacturer, not the dealer. Therefore, any necessary marking of parts under this theft prevention standard is the responsibility of the vehicle's manufacturer.

NHTSA also wishes to emphasize that this determination of when delivery occurs is solely applicable for the purposes of determining compliance with the requirements of the theft prevention standard. It does not affect any contractual provisions concerning which party bears the risk of loss for vehicles damaged in shipment, nor is it applicable to the provisions of the Safety Act or any other statutes administered by the agency. Those statutes may have differing underlying policy considerations from those of the Theft Act, and those considerations might mandate a contrary determination of when delivery occurs.

This final rule must also establish rules for certification of direct imports subject to the requirements of this standard. The NPRM noted that requiring alterations in the certification plate should prove feasible for all affected parties, since that notice proposed to limit certification authority to original manufacturers only.

However, this procedure would not be feasible for direct importers. The safety certification label cannot be affixed to the vehicle until the vehicle is certified as complying with the applicable safety standards. In the case of direct imports, that certification is not made until after the vehicle has been imported under bond and the necessary modifications have been made. As noted above, the Theft Act does not permit any vehicles to be imported which do not conform to the requirements of this standard. Therefore, a separate certification label will have to be affixed to these vehicles before they are "imported".

The agency believes that the direct importers' certification should be simple for the benefit of both Customs officials and the direct importers. Accordingly, the theft prevention standard requires that direct imported vehicles have a label permanently attached to each vehicle subject to this theft prevention standard, in the same positions on the vehicle and with the same lettering size and contrast requirements as is required

for the safety certification labels by Part 567, with the statement: "This vehicle conforms to the applicable Federal theft prevention standard in effect on the date of manufacture." Additionally, the label must identify the model year and line of the vehicle. Finally, the label must display the corporate or individual name of the direct importer that is certifying the vehicle's compliance with the theft prevention standard's requirements, preceded by the words "Imported by". This will be sufficient to inform Customs officials that the vehicle has been properly marked and identify the party which is certifying the conformity of the markings.

NHTSA wishes to emphasize that this separate certification is necessary only for those directly imported vehicles subject to this theft prevention standard. Those vehicles not subject to this standard need not be so certified. The other information required to appear on the Part 567 certification label will be affixed to the vehicle when that certification label is affixed, i.e., after the direct importer certifies that the vehicle complies with the applicable safety and bumper standards.

2. Replacement Parts

Again relying on the legislative instructions that the agency take into account current certification practices under the Safety Act, NHTSA proposed in the NPRM that certification of compliance with the replacement parts standard be accomplished by marking each replacement part with the symbol "DOT", and that the "DOT" symbol appear immediately adjacent to the "R" and manufacturer's logo required to appear on replacement parts.

Ford supported the proposed certification, noting that the DOT symbol has been effectively used as a certification of compliance with many standards applicable to motor vehicle equipment. Ford listed lighting equipment, brake hoses, brake fluids, automotive glazing, new and retreaded pneumatic tires, and motorcycle helmets as examples of motor vehicle equipment which must display the DOT symbol as the manufacturer's certification of compliance with the applicable safety standard. GM objected to the requirement to mark the DOT symbol on replacement parts as a certification of compliance. GM explained its objection by stating that the addition of the DOT symbol would not "add to the effectiveness of the marking, but it would increase its cost". GM concluded by recommending that should NHTSA decide to require the DOT marking to appear on replacement parts, it should delete the requirement to mark either

the logo or the "R" on the parts. No other commenters addressed this proposed certification requirement.

The agency has decided to adopt the certification requirement proposed for replacement parts. Section 606(c)(1) of the Cost Savings Act requires manufacturers of covered major replacement parts to furnish a certification that the part conforms to this standard at the time of delivery. For purposes of the Safety Act, the agency has used the DOT symbol as the certification of compliance for most of its motor vehicle equipment standards. Accordingly, it is appropriate to require this simple but effective certification for purposes of the Theft Act.

GM's comments are not persuasive. The agency intends that this standard impose the lowest costs necessary to comply with the requirements of the Theft Act. However, NHTSA has concluded that the costs of marking the letters "DOT" in addition to the letter "R" and the manufacturer's logo will be minimal, whether the markings are inscribed or affixed. The agency is unaware of, and GM did not explain, how the addition of these three letters would present any difficulties in either designing the replacement part markings or in ensuring that the markings are within the designated target area.

Further, GM's suggestion that either the letter "R" or the manufacturer's logo could serve as the certification of compliance was unsupported by any reasoning or precedent in the safety standards. The letter "R" and the manufacturer's logo were suggested by Congress and are adopted in this standard as the means of complying with the replacement parts marking requirement. It is still necessary to certify that those means of compliance have been used, under the requirements of section 606. If the means of compliance were also interpreted as a certification, the agency would be ignoring the Congressional admonition to take into account its certification practices under the Safety Act when establishing the certification practices under this theft prevention standard. Most of the agency's equipment standards require the manufacturer either to affix the letters "DOT" as a certification or to furnish a full statement that the equipment complies with the applicable standard, in the case of child restraint systems or slide-in campers. There are no examples under the Safety Act where the required markings also serve as a certification of compliance. For these reasons, the GM suggestion has not been adopted.

No special provisions have been made for direct imports of covered major parts. Such direct imports must be properly marked and so certified before they are imported into the United States, per section 607(a)(1) of the Cost Savings Act. This means that the markings and the "DOT" symbol must be inscribed on the part outside the customs territory of the United States. The NPRM proposed that the "DOT" symbol be the certification of compliance with this standard. This requirement, adopted in this final rule, poses no special problems for direct importers of covered major replacement parts similar to those which would have been posed for direct importers of vehicles under the proposed vehicle certification requirements.

Effective Date of this Theft Prevention Standard. Section 602(c)(4) of the Cost Savings Act specifies that this theft prevention standard shall take effect not earlier than 6 months after the date this final rule is published, except that an earlier effective date may be specified if the agency finds good cause for an earlier effective date, and publishes the reasons for that finding. In the legislative history, it was emphasized that "the Committee expects the Secretary to promulgate the [theft prevention] standard as expeditiously as possible so that major parts may begin to be numbered by the earliest possible model year." H. Rept. at 11. In consideration of these facts, the NPRM proposed that this standard would become effective 6 months after this final rule was issued, and that it would apply to new passenger cars and their covered major replacement parts beginning in the 1987 model year.

In response to this proposal, Mazda asked that the standard's effective date be set at September 1, 1986. They asserted that an effective date in the spring of 1986 would have severe consequences for manufacturers planning to introduce new 1987 models in the spring of 1986. The available lead time would, according to Mazda, force postponement of the model introduction for no reason other than the requirements of the theft prevention standard and the manufacturer's need for more lead time. Additionally, Mazda hypothesized that the manufacturer could advance the introduction of that new model to the fall of 1985 and designate it as a 1986 model year vehicle. This would result in the vehicle not being subject to the standard until its 1987 model year. Mazda asserted that this earlier introduction would not satisfy the intent of the theft prevention standard, because the manufacturer

would not be able to offer the same level of theft deterrence on the vehicle.

NHTSA is not persuaded by this comment. In the legislative history, Congress expressly stated: "The standard cannot apply to a car in the middle of the model year." H. Rept. at 11. It is generally known that the various manufacturers have different model years and that the various lines produced by the same manufacturer have different introduction dates, and, therefore, different model years. Given that this standard cannot apply to a car in the middle of a model year, setting an effective date of September 1, 1986 would allow manufacturers to avoid being subject to the standard in the 1987 model year, simply by introducing their high theft lines before September 1, 1986. Such a result would delay the marking of high theft lines until the 1988 model year. This is plainly inconsistent with the Congressional intent that this standard be effective as soon as possible. H. Rept. at 11. Accordingly, this suggestion has not been adopted.

Parenthetically, it is worth noting that Congress provided that manufacturers do not have to begin to comply with the theft prevention standard for a line which is selected for coverage under this standard less than 6 months before the start of the model year; section 603(a)(5) of the Cost Saving Act [15 U.S.C. 2023(a)(5)]. If Mazda is asserting that it needs more than 6 months leadtime, its assertion is directed at the language of the Theft Act itself, and not this prevention standard.

VW commented that no effective date should be set for this theft prevention standard until the agency had responded to the petitions for reconsideration of this rule, which petitions were "highly likely" in VW's view. NHTSA understands VW's concerns, but does not believe it would be appropriate to adopt this comment. Based on the comments and other information available to NHTSA at this time, the effective date for this standard is reasonable. With this rule, as with any other published by the agency, NHTSA sets an effective date for the requirements and allows the public to file petitions for reconsideration of those requirements. If, in response to such petitions, NHTSA concludes that the requirements should be significantly amended or the effective date no longer appears reasonable, the agency has authority to amend the effective date. 49 CFR 553.35(d). This procedure has worked well for all of NHTSA's rules, and NHTSA sees no reason to alter it for this theft prevention standard.

Honda commented that the effective date for this standard should be set so

that dealers can use up their inventory of unmarked replacement parts without violating this standard. The effective date for this standard means that the covered major parts of high theft lines will have to be marked in the 1987 model year and thereafter, while covered major replacement parts which are manufactured after the effective date of this standard and for use on 1987 or subsequent model year high theft line vehicles will have to be marked. All major replacement parts in dealers' stock as of the effective date of this standard will have been manufactured before that effective date, and are not subject to the requirements of this standard. Dealers are free to use such parts without violating any of the requirements of this standard.

Regulatory Impacts

A. Costs and Benefits to Manufacturers and Consumers

NHTSA has analyzed this rule and determined that it is not "major" within the meaning of Executive Order 12291. It is, however, "significant" within the meaning of the Department of Transportation regulatory policies and procedures, because of the high level of public and Congressional interest. A regulatory evaluation, analyzing in detail the impacts of the theft prevention standard has been placed in Docket No. T84-01, Notice 7. A copy of this evaluation may be obtained by any interested person by writing to: NHTSA Docket Section, Room 5109, 400 Seventh Street, SW., Washington, DC 20590, or by calling the Docket Section at (202) 426-2768.

To summarize that evaluation, the agency estimates that about 48 percent of all cars produced will be selected as high theft lines. Assuming 10 million passenger cars are manufactured in a model year, 4.8 million cars will be covered by this standard each model year. Some of these cars may eventually be equipped with original equipment anti-theft devices, instead of being marked. For the large manufacturers, NHTSA estimates that the costs of marking parts as required by this standard will be \$9.80 per vehicle, if the parts are stamped, and \$5.00 per vehicle, if the parts are labeled. The total annual fleet costs are thus estimated at \$47 million for stamped identifiers and \$24 million for labeled identifiers. Low volume manufacturers will probably use other technologies, such as hand stamping, hand engraving, or sand blasting. Their total costs will still be well under \$15 per vehicle.

The benefits associated with this theft prevention standard depend upon the

effectiveness of the marking requirements in reducing thefts. Assuming that these marking requirements will reduce thefts of high theft lines by 10 percent, NHTSA estimates that 25,000 vehicle thefts per year will be averted by this standard. Since the average value of a stolen vehicle is \$3,900, the annual value of a 10 percent reduction in thefts of high theft lines is \$98 million. However, this estimate should be considered preliminary, because no data exist to show the effectiveness of a full-scale marking system as mandated by this rule.

B. Small Business Impacts

The agency has also considered the impacts of this rulemaking action as required by the Regulatory Flexibility Act. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. Few of the passenger car or replacement part manufacturers subject to this standard are small entities. This theft prevention standard will not significantly increase the production or certification costs for those manufacturers which do qualify as small entities. Small organizations and governmental jurisdictions will be affected as purchasers of new passenger cars. However, the cost impact of this standard will be minimal. Accordingly, a regulatory flexibility analysis has not been prepared.

C. Environmental Impacts

NHTSA has considered the environmental implications of this rule, in accordance with the National Environmental Policy Act, and determined that it will not significantly affect the human environment. Accordingly, an environmental impact statement has not been prepared.

D. Paperwork Reduction Act

The Office of Management and Budget (OMB) has already approved the NHTSA requirement that VINs appear on all new vehicles (OMB # 2127-0051). However, this rule expands the scope and uses for the VIN. It also requires vehicle manufacturers to designate target areas for marking original equipment and replacement parts. Both these requirements are considered to be information collection requirements, as that term is defined by OMB in 5 CFR Part 1320. Accordingly, these requirements will be submitted to OMB for its approval, pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). A notice will be published in the Federal

Register when OMB makes its decision on this request.

List of Subjects

49 CFR Part 541

Administrative practice and procedure, Labeling, Motor vehicles, Reporting and recordkeeping requirements.

49 CFR Part 567

Labeling, Motor vehicle safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, Chapter V of Title 49 of the Code of Federal Regulations is amended as follows:

1. A new Part 541 is added, to read as follows:

PART 541—FEDERAL MOTOR VEHICLE THEFT PREVENTION STANDARD

Sec.

541.1 Scope.

541.2 Purpose.

541.3 Application.

541.4 Definitions.

541.5 Requirements for passenger cars.

541.6 Requirements for replacement parts.

Appendix A—Lines subject to the requirements of this standard.

Appendix B—Criteria for limiting the selection of prestandard lines having or likely to have high theft rates to 14.

Appendix C—Criteria for selecting lines likely to have high theft rates.

Authority: 15 U.S.C. 2021–2024, and 2026; delegation of authority at 49 CFR 1.50.

§ 541.1 Scope.

This standard specifies performance requirements for identifying numbers or symbols to be placed on major parts of certain passenger motor vehicles.

§ 541.2 Purpose.

The purpose of this standard is to reduce the incidence of motor vehicle thefts by facilitating the tracing and recovery of parts from stolen vehicles.

§ 541.3 Application.

This standard applies to those passenger car parts identified in § 541.5(a) that are present in the car lines listed in Appendix A of this Part. It also applies to the replacement parts for those cars, if the part is identified in § 541.5(a).

§ 541.4 Definitions.

(a) *Statutory terms.* All terms defined in sections 2 and 601 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1901 and 2021) are used in accordance with their statutory meanings unless otherwise defined in paragraph (b) below.

(b) *Other definitions.* (1) "Interior surface" means, with respect to a vehicle part, a surface that is not directly exposed to sun and precipitation.

(2) "Line" or "car line" means a name which a manufacturer applies to a group of motor vehicles of the same make which have the same body or chassis, or otherwise are similar in construction or design. A "line" may, for example, include 2-door, 4-door, station wagon, and hatchback vehicles of the same make.

(3) "Passenger car" is used as defined in § 571.3 of this chapter.

(4) "VIN" means the vehicle identification number required by Part 565 and § 571.115 of this chapter.

§ 541.5 Requirements for passenger cars.

(a) Each passenger car subject to this standard must have an identifying number affixed or inscribed on each of the parts specified in paragraphs (a)(1) through (a)(14) inclusive, if the part is present on the passenger car. In the case of passenger cars not originally manufactured to comply with U.S. vehicle safety and bumper standards, each such car subject to this standard must have an identifying number inscribed in a manner which conforms to paragraph (d)(2) of this section, on each of the parts specified in paragraphs (a)(1) through (a)(14) inclusive, if the part is present on the passenger car.

- (1) Engine.
- (2) Transmission.
- (3) Right front fender.
- (4) Left front fender.
- (5) Hood.
- (6) Right front door.
- (7) Left front door.
- (8) Right rear door.
- (9) Left rear door.
- (10) Front bumper.
- (11) Rear bumper.
- (12) Right rear quarter panel.
- (13) Left rear quarter panel.
- (14) Decklid, tailgate, or hatchback (whichever is present).

(b)(1) Except as provided in paragraphs (b)(2) and (b)(3) of this section, the number required to be inscribed or affixed by paragraph (a) shall be the VIN of the passenger car.

(2) In place of the VIN, manufacturers who were marking engines and/or transmissions with a VIN derivative consisting of at least the last eight characters of the VIN on October 24, 1984, may continue to mark engines and/or transmissions with such VIN derivative.

(3) In the case of passenger cars not originally manufactured to comply with U.S. vehicle safety and bumper standards, the number required to be

inscribed by paragraph (a) shall be the original vehicle identification number assigned to the car by its original manufacturer in the country where the car was originally produced or assembled.

(c) The characteristics of the number required to be affixed or inscribed by paragraph (a) shall satisfy the size and style requirements set forth for vehicle certification labels in § 567.4(g) of this chapter.

(d) The number required by paragraph (a) of this section must be affixed by means that comply with paragraph (d)(1) of this section or inscribed by means that comply with paragraph (d)(2) of this section.

(1) *Labels.* (i) The number must be printed indelibly on a label, and the label must be permanently affixed to the car's part.

(ii) The number must be placed on each part specified in paragraph (a) of this section in a location such that the number is, if practicable, on an interior surface of the part as installed on the vehicle and in a location where it:

(A) Will not be damaged by the use of any tools necessary to install, adjust, or remove the part and any adjoining parts, or any portions thereof;

(B) Is on a portion of the part not likely to be damaged in a collision; and

(C) Will not be damaged or obscured during normal dealer preparation operations (including rustproofing and undercoating).

(iii) The number must be placed on each part specified in paragraph (a) of this section in a location that is visible without further disassembly once the part has been removed from the vehicle.

(iv) The number must be placed entirely within the target area specified by the original manufacturer for that part, pursuant to paragraph (e) of this section, on each part specified in paragraph (a) of this section.

(v) Removal of the label must—

(A) Cause the label to self-destruct by tearing or rendering the number on the label illegible, and

(B) Discernibly alter the appearance of that area of the part where the label was affixed by leaving residual parts of the label or adhesive in that area, so that investigators will have evidence that a label was originally present.

(vi) Alteration of the number on the label must leave traces of the original number or otherwise visibly alter the appearance of the label material.

(vii) The label and the number shall be resistant to counterfeiting.

(viii) The logo or some other unique identifier of the vehicle manufacturer must be placed in the material of the

label in a manner such that alteration or removal of the logo visibly alters the appearance of the label.

(2) *Other means of identification.* (i) Removal or alteration of any portion of the number must visibly alter the appearance of the section of the vehicle part on which the identification is marked.

(ii) The number must be placed on each part specified in paragraph (a) of this section in a location that is visible without further disassembly once the part has been removed from the vehicle.

(iii) The number must be placed entirely within the target area specified by the original manufacturer for that part, pursuant to paragraph (e) of this section, on each part specified in paragraph (a) of this section.

(e) *Target areas.* (1) Each manufacturer that is the original producer who installs or assembles the covered major parts on a line shall designate a target area for the identifying numbers to be marked on each part specified in paragraph (a) of this section for each of its lines subject to this standard. The target area shall not exceed 50 percent of the surface area on the surface of the part on which the target area is located.

(2) Each manufacturer subject to paragraph (e)(1) of this section shall, not later than 30 days before the line is introduced into commerce, inform NHTSA in writing of the target areas designated for each line listed in Appendix A. The information should be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

(3) The target areas designated by the original vehicle manufacturer for a part on a line shall be maintained for the duration of the production of such line, unless a restyling of the part makes it no longer practicable to mark the part within the original target area. If there is such a restyling, the original vehicle manufacturer shall inform NHTSA of that fact and the new target area, in accordance with the requirements of paragraph (e)(2) of this section.

§ 541.6 Requirements for replacement parts.

(a) Each replacement part for a part specified in § 541.5(a) must have the registered trademark of the manufacturer of the replacement part, or some other unique identifier if the manufacturer does not have a registered trademark, and the letter "R" affixed or inscribed on such replacement part by means that comply with § 541.5(d),

except as provided in paragraph (d) of this section. In the case of replacement parts subject to the marking requirements of this section, which were not originally manufactured for sale in the United States, the importer of the part shall inscribe its registered trademark, or some other unique identifier if the importer does not have a registered trademark, and the letter "R" on the part by means that comply with § 541.5(d)(2), except as provided in paragraph (d) of this section.

(b) A replacement part subject to paragraph (a) of this section shall not be marked pursuant to § 541.5.

(c) The trademark and the letter "R" required by paragraph (a) of this section must be at least one centimeter high.

(d) The trademark and the letter "R" required by paragraph (a) of this section must be placed entirely within the target area specified by the vehicle manufacturer, pursuant to paragraph (e) of this section.

(e) *Target areas.* (1) Each manufacturer that is the original producer or assembler of the vehicle for which the replacement part is designed shall designate a target area for the identifying symbols to be marked on each replacement part subject to the requirements of paragraph (a) of this section. Such target areas shall not exceed 25 percent of the surface area of the surface on which the replacement part marking will appear.

(2) The boundaries of the target area designated under paragraph (e)(1) of this section shall be at least 10 centimeters at all points from the nearest boundaries of the target area designated for that part under § 541.5(e) of this part.

(3) Each manufacturer subject to paragraph (e)(1) of this section shall inform NHTSA in writing of the target areas designated for each replacement part subject to paragraph (a) of this section, at the same time as it informs the agency of the target area designated for the original equipment parts of the line, pursuant to § 541.5(e)(2) of this part. The information should be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

(4) The target area designated by the original vehicle manufacturer for the parts subject to the requirements of paragraph (a) of this section shall be maintained for the duration of the production of such replacement part, unless a restyling of the part makes it no longer practicable to mark the part within the original target area. If there is such a restyling, the original vehicle manufacturer shall inform NHTSA of

that fact and the new target area, in accordance with the requirements of paragraph (e)(3) of this section.

(f) Each replacement part must bear the symbol "DOT" in letters at least one centimeter high within 5 centimeters of the trademark and of the letter "R", and entirely within the target area specified under paragraph (d) of this section. The symbol "DOT" constitutes the manufacturer's certification that the replacement part conforms to the applicable theft prevention standard, and shall be inscribed or affixed by means that comply with paragraph (a) of this section. In the case of replacement parts subject to the requirements of paragraph (a) of this section, which were not originally manufactured for sale in the United States, the importer shall inscribe the "DOT" symbol before the part is imported into the United States.

Appendix A—Lines Subject to the Requirements of This Standard

[Reserved for listing lines selected as high theft lines.]

Appendix B—Criteria for Limiting the Selection of Prestandard Lines Having or Likely To Have High Theft Rates to 14

Scope

These criteria specify the factors the Administrator will take into account in determining which high theft lines initially introduced by a manufacturer into commerce before April 24, 1986, will be selected for coverage under this theft prevention standard.

Purpose

The purpose of these criteria is to enable the Administrator to select, with the agreement of the manufacturer, if possible, those high theft lines for which the greatest benefits in reducing motor vehicle theft are likely to be achieved by requiring those lines to be subject to this theft prevention standard.

Application

These criteria apply to those high theft lines produced by a manufacturer of passenger motor vehicles having more than 14 actual or likely high theft lines introduced into commerce before April 24, 1986.

Methodology

For each manufacturer producing more than 14 high theft lines that were introduced into commerce before April 24, 1986, these criteria will be applied to rank such lines in comparison to one another. Each manufacturer's lines will be considered only in relationship to other lines produced by the same manufacturer. Once the manufacturer's lines have been ranked according to which lines appear likely to show the greatest benefits in reducing vehicle thefts if covered by this theft prevention standard, the

Administration will select, by agreement with the manufacturer, if possible, and in accordance with the procedures set forth in § 542.2 of this chapter, 14 lines for coverage under this theft prevention standard.

Criteria

1. Proximity of the line's theft rate, calculated in accordance with the statutory formula, to the median theft rate. Higher theft rates will receive higher priority.

2. Approximate number of vehicles within such line scheduled to be produced in the upcoming model year. Larger projected productions receive higher priority. However, if the line is scheduled to be discontinued in the near future, it will be given lower priority than one which will continue to be produced.

3. Likelihood of significant design changes in the design of the line (such as downsizing or restyling) that would reduce the number of interchangeable parts within such line as between the new model year and previous model years. Lines with significant style changes will receive higher priority.

4. Whole vehicle recovery rate for such line in the most recent calendar year for which such data are available. Lines with higher recovery rates will receive lower priority.

5. Number of lines, and actual number of vehicles produced, having interchangeable parts with such line. Lines with which numerous low theft vehicles or lines have interchangeable parts will receive lower priority.

Appendix C—Criteria for Selecting Lines Likely To Have High Theft Rates

Scope

These criteria specify the factors the Administrator will take into account in determining whether a new line is likely to have a high theft rate, and, therefore, whether such line will be subject to the requirements of this theft prevention standard.

Purpose

The purpose of these criteria is to enable the Administrator to select, by agreement with the manufacturer, if possible, those new lines which are likely to have high theft rates.

Application

These criteria apply to lines of passenger motor vehicles initially introduced into commerce on or after January 1, 1983.

Methodology

These criteria will be applied to each line initially introduced into commerce on or after January 1, 1983. The likely theft rate for such lines will be determined in relation to the national median theft rate for 1983 and 1984. If the line is determined to be likely to have a theft rate above the national median, the Administrator will select such line for coverage under this theft prevention standard.

Criteria

1. Retail price of the vehicle line.
2. Vehicle image or marketing strategy.
3. Vehicle lines with which the new line is intended to compete, and the theft rates of such lines.

4. Vehicle line(s), if any, which the new line is intended to replace, and the theft rate(s) of such line(s).

5. Presence or absence of any new theft prevention devices or systems.

6. Preliminary theft rate for the line, if it can be determined on the basis of currently available data.

PART 567—CERTIFICATION

Part 567 is amended as follows:

2. The authority citation for Part 567 is revised to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, and 1407; 15 U.S.C. 1912 and 1915; 15 U.S.C. 2021, 2022, and 2028; delegation of authority at 49 CFR 1.50.

3. Section 567.1 is revised to read as follows:

§ 567.1 Purpose.

The purpose of this part is to specify the content and location of, and other requirements for, the certification label or tag to be affixed to motor vehicles as required by section 114 of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1403) (the Safety Act) and by sections 105(c)(1) and 606(c) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1915(c) and 2026(c)) (the Cost Savings Act), and to provide the consumer with information to assist him or her in determining which of the Federal Motor Vehicle Safety Standards (Part 571 of this chapter) and Federal Theft Prevention Standards (Part 541 of this chapter) (standards) are applicable to the vehicle.

4. Section 567.4 is amended by revising paragraph (g)(5) and adding paragraph (k) to read as follows:

§ 567.4 Requirements for manufacturers of motor vehicles.

(g) * * *

(5) The statement: "This vehicle conforms to all applicable Federal motor vehicle safety standards in effect on the date of manufacture shown above." The expression "U.S." or "U.S.A." may be inserted before the word "Federal".

(i) In the case of passenger cars manufactured on or after September 1, 1978, the expression "and bumper" shall be included in the statement following the word "safety".

(ii) In the case of 1987 model year passenger cars manufactured on or after April 24, 1986, the expression "safety, bumper, and theft prevention" shall be substituted in the statement for the word "safety".

(k) In the case of passenger cars admitted to the United States under 19

CFR 12.80(b)(1) to which the label required by this section has not been affixed by the original producer or assembler of the passenger car, a label meeting the requirements of this paragraph shall be affixed by the importer before the vehicle is imported into the United States, if the car is from a line listed in Appendix A of Part 541 of this chapter. This label shall be in addition to, and not in place of, the label required by paragraphs (a) through (j), inclusive, of this part.

(1) The label shall, unless riveted, be permanently affixed in such a manner that it cannot be removed without destroying or defacing it.

(2) The label shall be affixed to either the hinge pillar, door-latch post, or the door edge that meets the door-latch post, next to the driver's seating position, or, if none of these locations is practicable, to the left side of the instrument panel. If that location is also not practicable, the label shall be affixed to the inward-facing surface of the door next to the driver's seating position. The location of the label shall be such that it is easily readable without moving any part of the vehicle except an outer door.

(3) The lettering on the label shall be of a color that contrasts with the background of the label.

(4) The label shall contain the following statements, in the English language, lettered in block capitals and numerals not less than three thirty-seconds of an inch high, in the order shown:

(i) Model year and line of the vehicle, as reported by the manufacturer that produced or assembled the vehicle. "Line" is used as defined in § 541.4 of this chapter.

(ii) Name of the importer: The full corporate or individual name of the importer of the vehicle shall be spelled out, except that such abbreviations as "Co." or "Inc." and their foreign equivalents and the middle initial of individuals, may be used. The name of the importer shall be preceded by the words "Imported By".

(iii) The statement: "This vehicle conforms to the applicable Federal motor vehicle theft prevention standard in effect on the date of manufacture."

Issued on October 17, 1985.

Diane K. Steed,

Administrator.

[FR Doc. 85-25265 Filed 10-18-85; 3:37 pm]

BILLING CODE 4910-59-M

INTERSTATE COMMERCE COMMISSION

49 CFR PART 1002

[Ex Parte No. 246 (Sub-3)]

Regulations Governing Fees for Services Performed in Connection With Licensing and Related Service—1985 Update

AGENCY: Interstate Commerce Commission.

ACTION: Final rules; Correction.

SUMMARY: On October 1, 1985, at 50 FR 40024, the Interstate Commerce Commission published final rules which updated the Commission's current cost of providing services and benefits. Corrections to those rules were published at 50 FR 41158 (10-9-85) and 50 FR 41899 (10-16-85). The purpose of this document is to make final corrections to the decision.

EFFECTIVE DATE: October 24, 1985.

FOR FURTHER INFORMATION CONTACT:

Kathleen M. King, (202) 275-7428

or

Paul Meder, (202) 275-5360.

SUPPLEMENTARY INFORMATION: In this notice we are correcting several additional errors that appeared in the fee schedule announced at 50 FR 40024, on October 1, 1985.

The most significant correction involves Fee Item (74). The phrase "and contracts" was omitted from the description of that item. The correct description should read as follows: "The filing of tariffs, rate schedules, and contracts, including supplements." There was never any intention to eliminate the filing fee for contracts. All other corrections are minor editorial changes.

Decided: October 21, 1985.

By the Commission.

James H. Bayne,

Secretary.

Appendix

The following corrections are made in the document that was published at 50 FR 40024 (10-01-85).

§ 1002.2 [Corrected]

1. In § 1002.2 paragraph (f)(4), which appears at 50 FR 40026, the word "application" which appears in line four should be corrected to read "applicant."

2. In § 1002.2 paragraph (f)(17), which appears at 50 FR 40026, the word "of" should be corrected to read "or."

3. In § 1002.2 paragraphs (f) (46), (47), (48) and (49), which appear at 50 FR 40026, the cross reference to "49 CFR 1082.2" which appears in subparagraph

(iv) of each of those paragraphs should be corrected to read "49 CFR 1180.2(d)."

4. In § 1002.2 paragraph (f)(61), which appears at 50 FR 40026, the word "institution" should be corrected to read "institution."

5. In § 1002.2 paragraph (f)(72), which appears at 50 FR 40027, a closing parenthesis should be added after the word "disaster."

6. In § 1002.2 paragraph (f)(74), which appears at 50 FR 40027, the item description should be corrected to read as follows: "The filing of tariffs, rate schedules, and contracts, including supplements."

[FR Doc. 85-25318 Filed 10-23-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 50720-5154]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues a final rule to implement all but one of the proposed parts of Amendment 14 to the Fishery Management Plan for Groundfish of the Gulf of Alaska. Part 7 of the proposed amendment, incorporation of the NMFS habitat conservation policy, is approved but not implemented at this time until required analysis is prepared. The measures implemented by this rule will (1) allocate the sablefish resource to prevent potential gear conflicts and ground preemptions, (2) establish a new starting date for the harvest of sablefish, (3) reduce optimum yields (OYs) to prevent overfishing of certain groundfish species, (4) define a new regulatory district to manage rockfish stocks more discretely, (5) provide a flexible method for establishing prohibited species catch (PSC) limits for Pacific halibut, (6) revise the reporting system for catcher/processors, and (7) define directed fishing. This action is intended to implement measures that are necessary for conservation and management of the groundfish resources and for the orderly conduct of the fishery.

EFFECTIVE DATE: November 18, 1985.

ADDRESS: Copies of the amendment, the environmental assessment (EA), and the regulatory impact review (RIR)/final regulatory flexibility analysis (FRFA) may be obtained from the North Pacific

Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510, 907-274-4563.

FOR FURTHER INFORMATION CONTACT:

Ronald J. Berg (Fishery Biologist, NMFS), 907-586-7230.

SUPPLEMENTARY INFORMATION: The domestic and foreign groundfish fishery in the fishery conservation zone (FCZ) of the Gulf of Alaska is managed under the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). The FMP was developed by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and implemented by regulations appearing at 50 CFR Part 672.

The Council approved the seven parts of Amendment 14 at its May 21-24, 1985, meeting and submitted it to the Secretary of Commerce (Secretary) for Secretarial review. The Secretary is required by the Magnuson Act to approve, disapprove, or partially disapprove plans and plan amendments before the close of the 95th day following receipt. Following receipt of Amendment 14 on June 24, 1985, the Director, Alaska Region, (Regional Director) immediately commenced a review of the amendment to determine whether it was consistent with the National Standards, other provisions of the Magnuson Act, and any other applicable law. A Notice of Availability of the amendment was published in the *Federal Register* on June 28, 1985 (50 FR 26812), and the receipt date was announced. Proposed regulations were published in the *Federal Register* on July 26, 1985 (50 FR 30481). Public review and comment were invited until September 9, 1985. The decisions on Amendment 14 take these comments into account; they are summarized below according to subject.

The preamble to the proposed rule (50 FR 30481, July 26, 1985) described and presented the reasons for each part of Amendment 14. A summary from the proposed rule of what each part accomplishes follows:

1. *Allocate sablefish among gear types.* Legal commercial fishing gear used in the directed domestic sablefish fishery is limited to hook and line gear, pots, and trawls. Sablefish quotas are allocated among gear categories by regulatory area, and a schedule for phasing out pot gear is established.

This measure makes hook and line gear the only allowable gear type for the directed sablefish fishery in the Eastern regulatory area, starting in 1986 (Table 1). It also makes hook and line and trawl

gear the only allowable gear types for the directed sablefish fishery in the Central regulatory area, starting in 1987, and in the Western regulatory area, starting in 1989. The measure establishes a schedule for phasing out the use of pot gear in the Central and Western regulatory areas, by which pot gear may harvest sablefish in the Central regulatory area in 1986 and in the Western regulatory area in 1986, 1987, and 1988.

The measure also allocates the sablefish OYs among the gear types. In the Eastern regulatory area, 95 percent of the OY is allocated to hook and line gear; the remaining 5 percent is allocated to trawl gear as a bycatch to support target fisheries for other species. In the Central regulatory area in 1986, 55, 25, and 20 percent of the OY is allocated to hook and line, pot, and trawl gear, respectively. When pot gear is phased out of the Central regulatory area in 1987, the portion of the sablefish OY for that area that is allocated to pot gear in 1986 will be reallocated to hook and line gear; the share allocated to trawl vessels will remain at 20 percent. In the Western regulatory area in 1986, 1987, and 1988, 55, 25, and 20 percent of the OY is allocated to hook and line, pot, and trawl gear, respectively. When pot gear is phased out of the Western regulatory area in 1989, the portion of the sablefish OY for that area that is allocated to pot gear during those three years will be allocated to hook and line gear; the share allocated to trawl gear will remain at 20 percent.

Table 1.—Percentages of Sablefish Allocated by Year Among Hook and Line (H&L), Pot, and Trawl Gear Users for Each Regulatory Area in the Gulf of Alaska

Regulatory area	Year				
	1986	1987	1988	1989	1990
Eastern:					
H&L	95				
Pot	0	(1)			
Trawl	5				
Central:					
H&L	55	80			
Pot	25	0	(2)		
Trawl	20	20			
Western:					
H&L	55	55	55	80	(3)
Pot	25	25	25	0	
Trawl	20	20	20	20	

¹ 1987 and subsequent years—same as 1986

² 1988 and subsequent years—same as 1987

³ 1990 and subsequent years—same as 1989

2. *Change the starting date for the directed sablefish fishery.* This measure changes the starting date for the directed sablefish fishery from January 1 to April 1.

3. *Establish lower optimum yields.* New OYs by regulatory area are established for certain species as

follows: pollock—Western/Central 305,000 metric tons (mt); Pacific ocean perch—Western 1,302 mt, Central 3,906 mt; Atka mackerel—Central 500 mt, Eastern 100 mt; "other rockfish"—Gulf-wide 5,000 mt; and "other species"—Gulf-wide 22,460 mt.

4. *Define a new regulatory district.* A new regulatory district—the Central Southeast District—between 56°00' and 57°30' N. latitude is established for purposes of better managing demersal shelf rockfish, which are part of the "other rockfish" category. The harvest of "other rockfish" in this new district is limited to 600 mt. This quota will be subtracted from the "other rockfish" OY for the remainder of the Gulf of Alaska. Thus, the remainder of the "other rockfish" OY, or 4,400 mt, is available for harvest elsewhere in the management unit.

Also approved is language to be incorporated into the FMP that recognizes the State of Alaska's management regime for demersal shelf rockfish which is directed at managing these rockfish stocks within smaller management units than are provided for by the FMP. Such State regulations are in addition to and stricter than Federal regulations and are authorized by the FMP as long as they are (1) not in conflict with the management objectives of the FMP, and (2) limited to establishing smaller areas and quotas, which would result in a harvest of demersal shelf rockfish in each FMP management area at levels no different from that provided for by the FMP. Such State regulations apply only to vessels registered under the laws of the State of Alaska.

5. *Establish procedure for setting PSC limits for halibut.* A framework procedure is established for setting the PSC limits for Pacific halibut in the joint venture and domestic trawl fisheries. The attainment of these limits will result in a ban on the use of bottom trawl gear for the remainder of the fishing year.

These measures include (1) the establishment of halibut PSC limits; (2) the apportionment of PSC limits among regulatory areas or parts thereof; (3) the apportionment of PSC limits among gear types and/or individual operations; and (4) the designation of gear types and modes of operation to be either prohibited or permitted after a PSC limit has been reached.

As soon as practicable after October 1 of each year and after consultation with the Council, the Secretary will publish in the Federal Register the proposed halibut PSC management measures for domestic and joint venture fisheries. The measures will be based on criteria contained in § 672.20(e) and comments

will be invited on the proposed PSC measures for 30 days. The Secretary, after considering comments received, will publish final PSC measures in the Federal Register as soon as practicable after December 15 of each year. When the share of the PSC allocated to the domestic or joint venture fishery is reached, the Regional Director will, by notice published in the Federal Register, prohibit fishing with trawl gear other than off-bottom trawl gear for the rest of the year by the vessels and in the area to which the PSC limit applies, except that he may by such notice allow certain vessels to continue fishing with bottom trawl gear subject to the considerations listed in § 672.20(e)(2)(iv).

6. *Establish a weekly catch reporting system.* A reporting system is established whereby applicants are required to indicate on their Federal groundfish permit applications whether their vessels are to be used for (1) harvesting/processing, (2) mothership processing, (3) harvesting only, or (4) support only. If vessel usage fits (1) or (2), vessel operators will be required to check in and out of regulatory areas or districts. Such harvesting/processing vessels and motherships that catch and hold, or receive and hold, groundfish for periods of 14 days or more will be required to submit a weekly catch report to the NMFS Regional Director, Alaska Region. Vessels that freeze or dry-salt their catches are considered to be in these categories.

The first part of this new regulation requires the operators of catcher/processors and motherships to so indicate on their applications for Federal fishing permits, showing their capability and intent to preserve their catch at sea. The second part requires them to notify the Regional Director of the date, hour, and position, 24 hours before starting and upon stopping fishing in a regulatory area. The third part requires each operator of a catcher/processor or mothership that retains fish at sea for more than 14 days from the time it is caught or received to provide the Regional Director a weekly written report of the amounts of groundfish caught by species or species group in metric tons by fishing area.

A definition of "directed fishing" is also established. When any species, stock, or other aggregation of fish comprises 20 percent or more of the catch, take, or harvest that results from any fishing over any period or time, such fishing is rebuttably presumed to be directed fishing for such fish during that period.

In addition, NMFS proposed some minor changes to the information

required from applicants for a Federal permit to fish for groundfish in the Gulf of Alaska.

7. *Approve the incorporation of the NMFS habitat conservation policy.* This part of Amendment 14 is approved but not implemented by regulation at this time. It amends the FMP to address the habitat requirements of individual species in the Gulf of Alaska groundfish fishery. It describes the diverse types of habitat within the Gulf of Alaska, delineates the life stages of the groundfish species, identifies potential sources of habitat degradation and the potential risk to the groundfish fishery, and describes existing programs applicable to the area that are designed to protect, maintain, or restore the habitat of living marine resources. The amendment responds to the Habitat Conservation Policy of NMFS (48 FR 53142, November 25, 1983), which advocates consideration of habitat concerns in the development or amendment of FMPs and the strengthening of NMFS' partnerships with States and the councils on habitat issues.

It authorizes, but does not require, certain regulations specific to habitat conservation objectives. One such regulation would require vessel operators to retrieve their own fishing gear and to make a reasonable attempt to retrieve any abandoned or discarded fishing gear that they may encounter. While a regulation of this type was proposed in the notice of proposed rulemaking, it has not been included in the final rule because it has not yet been adequately analyzed under Executive Order 12291, the Regulatory Flexibility Act, (RFA) and the National Environmental Policy Act (NEPA).

Changes in the Final Rule From the Proposed Rule

NOAA has made changes to cause this final rule to differ from the proposed rule. The definition of the Central Southeast District was inadvertently omitted in § 672.2 Definitions although it was included in the preamble to the proposed rule. It has been included in the final rule. In § 672.5(a)(3), paragraphs (a)(3)(i) and (a)(3)(ii), referring respectively to catching fish and receiving fish at sea but otherwise identical, are combined. The new § 672.25, Disposal of fishing gear and other articles, is held in reserve until additional analysis is provided. In addition, minor technical changes are made to regulatory text.

Public Comments Received

Seventy-three written responses were received, mostly from fishermen, fishing

associations, or their representatives. Included among the comments were those from the Governor of the State of Alaska, the two Senators and the Congressman from the State of Alaska, and Congressmen from the State of Washington.

All comments addressed the issue of allocating sablefish among gear types and phasing out pot gear. Three comments addressed the new sablefish starting date, and one comment briefly addressed the catcher/processor reporting requirement. Of the individual letters received favoring the amendment, 36 were from the State of Washington and 11 were from Alaska. In addition, a petition was received from the Sitka-based Alaska Longline Fishermen's Association, containing 321 signatures, favoring approval of the amendment. Of the comments received against the amendment, 16 were from the State of Washington and 2 were from Alaska. Some of the letters were from fishing associations representing large numbers of fishermen; therefore the 73 letters represent a much larger number of constituents both for and against the amendment.

All of the unfavorable comments received are summarized, categorized, and responded to below. Most of these were balanced by comments that favored the sablefish allocations and phasing out of pot gear. Favorable comments are not published. Certain of the comments relate to the Magnuson Act's national standards and other applicable law. NOAA's guidelines (50 CFR Part 602), the national standards and Executive or Congressional intent of other applicable law were used as guidance in responding to comments.

Comments Against the Measure To Allocate Sablefish and Phase Out Pot Gear

Comment 1. The sablefish allocation measure violates National Standard 2, because the Council failed to take into account information readily available on the impact of this measure on the trawl fisheries.

Response. The Council did consider the effects of the allocation measure on the trawl industry. Representatives of the trawl industry testified that they needed not only a sablefish bycatch to support their other target fisheries, but a direct allocation of sablefish as well to help subsidize operations on species that provide only marginal profits. The Council recommended allocating to trawlers 20 percent of the available OYs in the Western and Central regulatory areas where the majority of trawl fisheries are conducted. This is about four times what is required for a

bycatch, estimated from the NMFS "best blend" catch data to be no greater than 5 percent (sablefish are mostly taken when fishing for flounder). The Council thus provided for a limited directed trawl fishery. The Council's decision is consistent with National Standard 2.

Comment 2. The measure violates National Standard 4 in that (1) it discriminates in favor of Alaska residents of coastal communities in Alaska by eliminating Seattle-based, at-sea processors; (2) it is incapable of being analyzed regarding whether the allocation is fair and equitable, and therefore is unadoptable; and (3) it ultimately provides a single entity with an excessive share, over 87 percent, of the sablefish harvested.

Response. National Standard 4 requires that conservation and management measures shall not discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privileges among various fishermen, such allocations shall be (a) fair and equitable to all such fishermen, (b) reasonably calculated to promote conservation, and (c) carried out in such a manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

Although many management measures have incidental allocative effects, only those that result in direct distributions of fishing privileges are judged against National Standard 4. This assignment of ocean areas and/or portions of available sablefish for harvest to particular gear users is such a direct allocation of fishing privileges. It is a direct and deliberate distribution of the opportunity to participate in the sablefish fishery. These measures do not differentiate either directly or indirectly among U.S. citizens on the basis of their States of residence; hook and line, pot, and trawl fishermen who participate in the fishery reside both outside and within the State of Alaska. These measures also do not discriminate against at-sea processing. At-sea processing is still permitted and may be conducted by both trawl and hook and line vessels.

Other factors to be considered in making allocations include whether allocations are fair and equitable, are reasonably calculated to promote conservation, and avoid excessive shares.

To allow pot vessels to continue to participate and to expand their efforts in the fishery indefinitely would be unfair to the hook and line fishermen. It is clear from the administrative record that pot gear preempts the fishing grounds

and forces the hook and line fishermen to either seek other fishing grounds or lie idle. Productive sablefish grounds occur in a narrow contour and a single pot vessel may easily displace several hook and line fishermen from the same grounds. Pot vessels can unfairly impose economic inefficiencies on the hook and line vessels indirectly by forcing them to search for other grounds and directly through losses of fishing gear and the resulting down time to regear.

Another consideration is the availability of alternative fisheries. Many hook and line sablefish fishermen participate in the severely overcapitalized Pacific halibut fishery. Many are smaller vessels with few, if any, alternative fisheries to which they can turn if the sablefish fishery becomes unprofitable through evolution to a highly capitalized large boat fleet which takes the entire OY in a short time period. Whereas many hook and line vessels would be unable to convert to pot gear or any other gear type, that option is available under the proposed regime to the pot vessel operators. The pot vessel owners can refit with longline gear, convert to other large-boat fisheries, to move to the Bering Sea to fish pots for sablefish. It is fair and equitable to exclude pot gear now while there are still only a small number of these vessels compared to several hundred hook and line vessels. Delaying action will only make it more difficult to remove pot gear in the future and would perpetuate hardships now being imposed on the hook and line fishery.

The national standards guidelines make it clear that the allocation of fishing privileges may impose a hardship on one group if it is outweighed by the total benefits received by another group or groups. An allocation need not preserve the status quo in a fishery to qualify as fair and equitable if a restructuring of fishing privileges would maximize overall benefits. NOAA accepts the Council's conclusion that these measures maximize overall benefits.

Catch statistics from the last three years of the sablefish fishery reveal an increasing transfer of the OY from hook and line vessels to pot vessels. It is reasonable to assume this transfer will be maintained and probably increased unless these measures are undertaken.

The sablefish measures recognize that the hook and line fisherman and the processors to whom they sell have developed this fishery, including the wholesale markets, and, in Southeast Alaska, depend upon it. The sudden disruption of a major resource base, which is currently occurring, would result ultimately in economic hardship in a

number of small communities that have few alternatives for employment. The Council has considered the dependence on the sablefish fishery by present participants and coastal communities in view of the fact that overall economic efficiency requires that such issues as employment impacts and community economic stability are taken into account in addition to production efficiency.

Another argument that has been made is that the allocation to trawl vessels is not fair and equitable because it constrains the ultimate full utilization of the multispecies groundfish complex in the Gulf of Alaska. NOAA doesn't agree with this allegation, at least with respect to the trawl fishery's present structure. As previously discussed, actual bycatch rates of sablefish by domestic trawlers fishing in a variety of joint venture operations in the Gulf in 1984 and 1985 are all less than 5 percent. The proposed allocation to trawlers of 20 percent of the sablefish OY in the Western and Central Gulf adequately provides for all bycatch needs plus some level of directed sablefish harvest to support marginally profitable operations on lower-valued species. Whether 20 percent of the sablefish is enough only time will tell. No quantifiable evidence has been presented that it is not adequate.

For the reasons above, NOAA has concluded that the phase-out of pot gear and the allocations between gear types are fair and equitable in this particular instance. This should not be viewed as a precedent for other fisheries where circumstances may differ.

Comment 3. The measure violates National Standard 5, because it does not promote efficiency and was selected solely for economic reasons.

Response. National Standard 5 requires conservation and management measures, where practicable, to promote efficiency in the utilization of fishery resources, except that no such measure shall have economic allocation as its sole purpose. The term "utilization" encompasses harvesting, processing, and marketing, since management decisions affect all three sectors of the industry.

"Efficiency" is a complex term to define as it relates to fisheries. In the national standards guidelines, NOAA defines efficiency as the ability to produce a desired effect or product (or achieve an objective) with a minimum of effort, cost, or misuse of valuable biological and economic resources. In other words, management measures should be chosen that achieve the FMP's objectives with minimum cost and burdens on society. NOAA has

concluded that the sablefish measures do promote efficiency, where practicable, principally by addressing real and potential inefficiencies which are created by and would be contributed to by continuing the status quo within the fishery.

By reducing the potential for grounds preemption and/or gear conflicts the phasing out of pot gear will reduce or eliminate the inefficiencies of lost income and productivity imposed on the hook and line fishery by having to replace lost gear or having to find new fishing grounds.

The RIR concludes that the existing hook and line fleet is fully capable of harvesting the entire OY in every regulatory area of the Gulf of Alaska. By phasing out pot gear, the rate of overcapitalization in the fishery is reduced. More importantly, however, the economic loss that would result from the inefficient use of capital and from incompatible gear types competing for a limited resource is reduced or eliminated.

The allocation of the sablefish OY between the hook and line and trawl gear types will promote efficiency as well. Studies have shown that a significant amount of the trawl catch of a given species is discarded due to unsuitability of either its size or condition for the marketplace. These discards are both an economic and biological waste as they are usually juveniles which have not yet spawned. The hook and line fishery maximizes both the poundage yield and value from the sablefish resource with little wastage. The sablefish allocation measures promote efficiency by ensuring that the fishery that maximizes the net benefits from the sablefish resource is the principal harvester of that resource.

Overall social efficiency is also promoted by these measures. Although it is difficult to quantify and analyze the social and economic impacts throughout the community infrastructure, the analysis that was conducted and the large amount of public testimony and debate on the issues create a record adequate to conclude that to continue the status quo would be to condone the disruption and dislocation of harvesting, processing, marketing, and employment patterns within several local communities.

In determining whether the sablefish measures have economic allocation as their sole purpose, NOAA considered whether the problems the Council was attempting to address were solely economic. The administrative record of the Council's deliberations, public

testimony, Amendment 14's supporting documents, and comments received in response to the proposed rulemaking create a clear record of the problems within the sablefish fishery. These problems can be described in three general categories: (1) Conservation (2) grounds preemption and gear conflicts; and (3) the inequities and inefficiencies brought about by the rapid expansion of two new gear types, trawls and pots, in a fishery where the existing capital and capacity is already sufficient to harvest the full OY. A fourth category related to (3) is to maximize the benefits to the United States from the harvest of the sablefish resource as part of the Gulf-wide groundfish complex. Because of the diversity and character of problems the Council was attempting to address by the sablefish measures, NOAA can only conclude that the purpose of the measures is not solely economic, but biological and social as well.

NOAA also examined the argument that the Council may have passed up alternative measures with less allocative consequence and that the measures proposed are, therefore, chosen solely for allocative purposes. NOAA has concluded, as did the Council, that only the direct allocation of the sablefish resource between hook and line and trawl gear will maximize the yield and value (net benefits) from the harvest of both the sablefish resource and the entire groundfish complex, prevent wastage of juvenile or unmarketable sablefish, prevent overfishing, and stabilize the erosion of the harvesting, processing, marketing, and community infrastructure supporting the hook and line fishery.

Real alternatives do exist that might address, to some degree, the problem of incompatibility between pot and hook and line gear. These alternatives were extensively considered by the Council in developing its proposals and are discussed in the RIR. The most viable alternatives are (1) to allocate the OY among all three gear types, and (2) to segregate the gear types either spatially or temporally.

Allocating a portion of the OY to all three gear types doesn't address to any extent the incompatibility of gear types on the same fishing grounds. It also creates a greater monitoring burden while increasing the costs of management and enforcement. Segregating the gear types, especially pot and hook and line gear, spatially or temporally might address the gear incompatibility issue, but does little to make the fishery more easily manageable and thus prevent overfishing or address any other

problems the Council was attempting to solve. In fact, such a solution would increase monitoring and enforcement costs and impose operational inefficiencies on all the participants in the fishery violating both National Standards 5 and 7.

The basis upon which gear types were segregated in time or space could create serious National Standard 4 questions of fairness and equitability as each group might be expected to perceive benefits and disadvantages related to the various areas or seasons. One gear group might easily claim that the other was given superior fishing grounds or a season that was more favorable for product quality, catchability, or marketing.

On the basis of the administrative record, Council discussions, the supporting documents, and comments on the proposed rulemaking, NOAA has concluded that the sablefish gear restrictions and allocative measures do not have allocation as their sole purpose and that they are consistent with National Standard 5.

Comment 4. The measure violates National Standard 7, because (1) the measure was not the least burdensome (2) elimination of directed trawl and pot gear east of 147° W. longitude is overly onerous, (3) phased elimination of pots west of 147° W. longitude and the reduction of the trawl catch to 20 percent is without any basis in the record, and (4) it fails to address any problem in the existing fishery.

Response. National Standard 7 requires conservation and management measures, where practicable, to minimize costs and avoid unnecessary duplication. The guidelines provide the overall test concerning this standard, which is that only those regulations which would serve some useful purpose, and where the present or future benefits of regulation would justify the costs, should be implemented. Although the comments contend that the measure fails to address any problem in the existing fishery west of 140° W. longitude, NOAA considers potential problems that are likely to become real in the present or the future to be appropriate candidates for Federal regulation. The types of problems intended for resolution by this measure are already occurring west of 140° W. longitude because the fishery is now being conducted there throughout the Gulf of Alaska.

The national standards guidelines' discussion of burdens as they relate to minimizing costs recognizes that management measures should be designed to give fishermen the greatest possible freedom of action in conducting

business. Inherent in managing fisheries where conflicts among user groups are unavoidable without regulation is the fact that the greatest possible freedom of action is not practicable. Some measures likely will be necessary which will reduce freedom of action. The Council heard and considered a wide range of management alternatives during public testimony at its February, March, and May 1985 meetings, including smaller areas in which to prohibit pot gear and alternative OY allocations for the trawlers. The national standards guidelines state that alternative management measures should not impose unnecessary burdens on the economy, on individuals, or on the Federal, State, or local governments. In light of the circumstances reflected in the record, NOAA has concluded that this rule is necessary and is not unnecessarily burdensome. After considering the intent of the national standards guidelines, as they address National Standard 7, and a review of the Council action, NOAA finds these measures to be consistent.

Comment 5. The Council did not articulate its objectives for sablefish management and the proposed restrictions are inconsistent with the FMP's objectives.

Response. NOAA agrees that the Council did not adopt new objectives for the FMP and did not clearly articulate its objectives in the RIR. Nevertheless, NOAA has concluded that the proposed measures are consistent with the FMP's current objectives.

Under the national standards guidelines, an allocation of fishing privileges should rationally further an FMP objective. Two existing objectives of the FMP are the (1) rational and optimal use, in both the biological and socioeconomic sense, of the region's fishery resources as a whole, and (2) provision for the orderly development of domestic groundfish fisheries. These measures further the rational and optimal use of the fishery resources by stabilizing and maintaining the existing hook and line fishery, which is capable of harvesting the entire sablefish OY. These measures will counteract the socioeconomic disruption to an established industry that has already begun to occur as the result of expansion of both pot and trawl gear in the fishery. These measures provide a regulatory regime in which the hook and line fishery can function without fear of gear conflicts and groundfish preemptions by trawl fisheries that have yet to fully utilize other groundfish stocks throughout the Gulf of Alaska by providing a reasonable sablefish

bycatch in the Eastern area and a small target allocation elsewhere in the Gulf of Alaska to contribute to their profitability.

Comment 6. The measure violates 16 U.S.C. 1853(b)(6), because the Council failed to address this amendment in the manner prescribed by this statute, which requires that the public be put on notice of intent to implement a limited access system, since gear limitation is a form of limited access system.

Response. The measure is not a limited access system for purposes of 16 U.S.C. 1853(b)(6). Access to the sablefish fishery in all parts of the Gulf of Alaska is still open to all who desire such access. It is only the type of gear that can be used in the fishery that is affected by the new measure.

Comment 7. Ground preemptions and gear conflicts were used to justify the allocation of the sablefish resource.

Response. Ground preemptions and gear conflicts were a major consideration of the Council when it adopted the management measure. However, the Council was also responding to the issue of stabilizing the infrastructure of the large hook and line fleet in the face of expansion into the fishery by pot and trawl gear types. The Council considered numerous factors when allocating the sablefish OY primarily to the hook and line fleet. These included providing the fleet alternatives to the Pacific halibut fishery, economic and social impediments to the hook and line fishery in the face of increased effort, risk of overfishing due to the effort, shorter seasons, reduced income, erosion of developed market channels, resource waste of small fish when discarded by trawlers, efficiency of hook and line gear, and the selectivity of that gear for large-size fish, which are high-valued in the market. NOAA is satisfied that factors other than ground preemptions and gear conflicts justify the sablefish allocation.

Comment 8. Other allocative measures were available which were less destructive to extant investments.

Response. Comment noted. As was discussed above, the Council and NOAA has concluded that these alternatives would not address all the problems raised in the record as completely as the measure that was chosen.

Comment 9. The historical dependence of hook and line gear on sablefish is overstated.

Response. NOAA recognizes that the hook and line fleet has fished for sablefish in the area east of 140° W. longitude and that domestication of the

entire sablefish fishery Gulf-wide has occurred for the first time only in 1985.

Comment 10. The Administrative Procedure Act precludes the adoption of the policy formulated by the measure, because, as a policy-making body, the Council was predisposed to eliminate pots, failed to take into account the impact of the measure on trawlers, failed to articulate its objective for management, and failed to look at reasonable alternatives.

Response. Section 706 of the Administrative Procedure Act (APA) sets standards for agency action, findings, and conclusions, requiring them to be set aside following judicial review if they are found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. Since the Council plays a primary role in formulating policy regarding the conduct of fisheries in Federal waters off Alaska, and makes recommendations to the Secretary for the implementation of that policy, the process by which the Council makes such recommendations must be governed by the standards set forth in the APA.

NOAA is convinced that the Council was not predisposed to eliminate pots. It considered voluminous testimony at several Council meetings from pot fishermen with years of experience in the sablefish fishery off the Pacific coast. It considered testimony as to their needs to expand into the Gulf of Alaska sablefish fishery with pot gear as a result of reduced fishing off the Pacific coast, and the amount of effort, time, and money invested in pots and vessels. Trawl fishermen also testified that they needed to harvest the more valuable sablefish to subsidize their operations for other groundfish species for which their profit margin is small. Hook and line fishermen testified about their needs for an alternative to the severely over-capitalized hook and line fishery for Pacific halibut. The Council heard many arguments for and against variations of the Amendment concerning efficiency, product quality, potential for gear conflicts and ground preemptions, reduced employment among the fishing, processing, and transporting sectors, and conservation of the sablefish resource. Questions posed by Council members to those testifying from among all the user groups gave no indication that the Council was predisposed to eliminate pot gear, failed to take into account the impact of the measure on trawlers, failed to articulate its objectives for management, or failed to look at reasonable alternatives. NOAA concludes that the Council's process was consistent with the APA.

Comment 11. The RIR evidences a basis in favor of hook and line interests which is so pervasive as to render it vulnerable to judicial intervention.

Response. The RIR is an analysis of the potential problems of ground preemptions, gear conflicts, and socioeconomic disruption to the predominant existing infrastructure dependent on the sablefish resource, i.e., the problems highlighted to the Council by public testimony. If the RIR appears biased toward resolution of these problems, it is because it contains statements of the problems perceived by the hook and line fishermen and Council that justified resolution through Federal regulation. It must be emphasized strongly that the RIR is only one part of the total record of the consideration of the amendment by the Council and NOAA. Neither the Council nor NOAA necessarily concurs with all the conclusions of the RIR, and they went well beyond it in formulating their final decisions on the amendment.

Comment 12. The record does not clearly show that the Council adequately considered alternatives to the proposed amendment which would be more fair and equitable.

Response. The Council considered, and recorded on tape, voluminous public testimony at its February, March, and May 1985 meetings about possible combinations of areas and sablefish allocation shares. The subject of this testimony concerned fairness and equity as perceived by the fishermen or their representatives who presented it, and resulted in a vast range of alternatives being presented to the Council.

Comment 13. The amendment is inconsistent with the intent of the Magnuson Act to encourage full domestication of fisheries in U.S. waters.

Response. Sablefish is now a fully domesticated fishery in the Gulf of Alaska. The Council considered the effects that allocating sablefish to hook and line gear and trawlers and the scheduled phase-out of pot gear would have on U.S. fishermen who have been fishing in the Gulf of Alaska. The Council deliberately established hook and line gear as the primary gear type in the sablefish fishery partly to give users of that gear an alternative fishery they could depend upon during seasons when the Pacific halibut fishery would not support the hook and line fleet. Except for a small part of the hook and line fleet which is able to produce a little income from rockfish landings, a primary resource for the hook and line fleet is sablefish. The 20 percent allocation to U.S. trawlers is more than

is needed to support a bycatch in other target fisheries. It is intended by the Council to provide for a directed trawl fishery to aid trawl operations that are dependent on small profit margins resulting from low-value groundfish species. The Council's consideration of the needs of trawlers reflects its intent to foster the domestic harvest of all groundfish.

Comment 14. Panels in pots can be made of biodegradable material that would rot away, thus preventing "ghost" fishing.

Response. Current domestic regulations implementing the FMP at 50 CFR 672.24 require each sablefish pot to have a biodegradable panel of untreated cotton twine or natural fiber in the tunnel that will allow sablefish to escape. NOAA understands that this panel functions as intended.

Comment 15. Hooked undersized sablefish suffer mortality.

Response. Comment noted. Small fish often undergo physical trauma as a result of being hooked.

Comment 16. Large amounts of hook and line gear are lost annually.

Response. Comment noted. NOAA has no data to estimate how much hook and line gear is lost, but any type of fishing gear is subject to loss and this leads to costs in the fishery.

Comment 17. The RIR is inadequate under the RFA, Executive Order 12291, and NOAA guidelines.

Response. Requirements of the RFA, the Executive Order, and the national standards guidelines include the types of information that should be included when analyzing a regulation to determine whether it is "significant" under the RFA and/or whether it is "major" within the meaning of the Executive Order. NOAA has no rigid format to be followed in preparation of an analysis, but does set standards that the analysis must comply with to satisfy the requirements of the RFA and the Executive Order. Although NOAA recognizes that the RIR has certain shortcomings, it has concluded that it is adequate to satisfy the requirements of the RFA and Executive Order. NOAA emphasizes that the RIR is not the sole record of the Council's consideration of alternatives and impacts of the proposed actions. The Council considered extensive testimony and comments which form the full administrative record and upon which it relied heavily in making its recommendations.

Comment 18. The environmental assessment is inadequate, because it fails to identify individuals contacted in the process of preparing the document,

and because the agency failed to actively solicit public comments.

Response. The Council identified agencies, but not individuals, when it prepared the EA. Although NOAA did not use the words "invite comments" or similar words to actively solicit public comments, both the Notice of Availability and the Notice of Proposed Rulemaking (NPR) stated that the EA was available for public review at the Council's office. NOAA considers the invitation for comments in the NPR to be an initiation for comments on all documents supporting the proposed rule. This is because the findings in the CLASSIFICATION section concerning "other applicable law" are based on the supporting documents, thus subjecting those documents also to comment during the comment period.

Comment 19. The decision not to prepare an environmental impact statement is substantively in error.

Response. The purpose of an EA is to determine whether significant impacts on the human environment could result from a proposed action. If the action is determined not to be significant, the EA and the resulting "finding of no significant impact" will be the environmental documents required under NEPA. NOAA believes the decision not to prepare an environmental impact statement on the basis of the EA is appropriate and complies fully with NEPA.

Comments on Other Issues

Comment 20. The April 1 starting date would promote resolution of problems associated with vessel safety and product quality.

Response. NOAA notes the comment and concurs that, on the basis of testimony on the season starting date issue, vessel safety will be enhanced, especially among those smaller vessels that would otherwise try to compete with larger pot and hook and line vessels during inclement late winter weather. NOAA has no information to take a position on product quality. Many fishermen and processors have stated that the occurrence of "jelly bellies" or fish which have soft, infirm flesh is common during the pre-April 1 spawning period.

Comment 21. Amendment 14 establishes a weekly catch reporting system for certain catcher/processor vessels. Initially, the Council considered requiring domestic observers on board such vessels, but problems of liability for the safety of such observers caused consideration of the catcher/reporting system instead. The commenter recommends approval of Amendment 14

as quickly as possible, including the reporting system.

Response. NOAA notes the comment.

Comment 22. The reporting requirements are not clear whether the statement at § 672.5(a)(3)(A), "no such operator may retain any part of the vessel's catch on board that vessel for a period of more than 14 days from the time it is caught unless the Regional Director has been notified as required under this paragraph during that period" is intended to be simply, a means of defining vessels which are subject to the reporting requirement, or whether this is intended to be a penalty, mandating seizure of the catch from a vessel failing to comply with reporting requirements. The planning burden and cost of giving 24 hours advance notification of starting and stopping fishing activities is high. The needs of management do not require such real-time information about the commencement of fishing.

Response. The purpose of this requirement is to define vessels that are subject to this reporting requirement. Prohibiting retention for more than 14 days does not mandate seizure of the catch from a vessel failing to comply with the requirement. Under the Magnuson Act, the vessel may receive a notice of warning or a citation. Depending on the gravity of the situation, further sanctions are possible. A catch may be seized, or the vessel may be seized. For serious infractions, even criminal penalties are possible.

This new reporting requirement is intended to collect information on catch from those catcher/processing vessels that remain at sea for lengthy periods and which do not otherwise land their catches frequently enough to provide managers information needed to make real-time management decisions. The Council discussed various ways by which catcher/processors could be defined and thus considered separately from the large number of vessels that make short trips, return to port, and report their catches within a time frame useful to managers. Experienced managers and processors suggested that catcher/processors are likely to remain at sea for 14 days or more; 14 days, therefore, is a general guide to define the category of catcher/processors for which timely catch estimates have not been available in the past and which are subject to this requirement.

NOAA believes the benefits to the resource of requiring catcher/processors to give 24-hour notification before starting and stopping fishing in a regulatory area or district outweighs the costs to the industry. NMFS believes that effective fisheries management

requires effective enforcement; NMFS' experience of regulating the foreign fisheries using the same standards has proved that fishing vessels are able to comply with the requirement without inordinate costs.

Comment 23. The text in § 672.25(b). Disposal of fishing gear and other articles, must include the word "floating" between the words "discarded" and "fishing" to be consistent with specific regulatory language approved by the North Pacific Fishery Management Council.

Response. Comment noted. This regulation is being set aside at this time until further analysis is provided.

Classification

The Regional Director determined that this amendment is necessary for the conservation and management of the groundfish fishery and that it is consistent with the Magnuson Act and other applicable law.

The Council prepared an EA for this amendment and concluded that there will be no significant impact on the human environment as a result of this rule. A copy of the EA may be obtained from the Council at the address above.

The Administrator of NOAA determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. This determination is based on the RIR/FRFA prepared by the Council. A copy of the RIR/FRFA may be obtained from the Council at the address above.

The Council prepared a FRFA which describes the effects this rule will have on small entities. You may obtain a copy of the FRFA from the Council at the address above.

This rule contains collection of information requirements subject to the Paperwork Reduction Act. The collection of information has been approved by the Office of Management and Budget and continues under OMB Control Numbers 0648-0097 and -0016.

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of Alaska. This determination was submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act. The State agencies agreed with this determination.

List of Subject in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Dated: October 16, 1985.

Carmen J. Blondin,
Deputy Assistant Administrator for Fisheries
Resource Management, National Marine
Fisheries Service.

PART 672—GROUND FISH OF THE GULF OF ALASKA

For the reasons set out in the preamble, Part 672 is amended to read as follows:

1. The authority citation for Part 672 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. In the table of contents, new sections are added in numerical order to read as follows:

Subpart B—Management Measures

Sec.	
672.23	Seasons.
672.25	Disposal of fishing gear and other articles. [Reserved]

3. In § 672.2, a new definition, Directed fishing, is added in alphabetical order; in the definition for Regulatory district, paragraphs (1), (2), (3), and (4) are renumbered (2), (3), (4), and (5), respectively, and a new paragraph (1) is added, to read as follows:

§ 672.2 Definitions.

Directed fishing, with respect to any species, stock or other aggregation of fish, means fishing that is intended or can reasonably be expected to result in the catching, taking, or harvesting of quantities of such fish that amount to 20 percent or more of the catch, take, or harvest, or to 20 percent or more of the total amount of fish or fish products on board at any time. It will be a rebuttable presumption that, when any species, stock, or other aggregation of fish comprises 20 percent or more of the catch, take, or harvest, or 20 percent or more of the total amount of fish or fish products on board at any time, such fishing was directed to fishing for such fish.

Regulatory district * * *

(1) Central Southeast Outside district—all waters of the FCZ between 56°00' N. latitude and 57°30' N. latitude and east of 137°00' W. longitude;

4. In § 672.4, paragraphs (b), (d), and (e) are revised to read as follows:

§ 672.4 Permits.

(b) *Application.* The vessel permit required under paragraph (a) of this

section may be obtained by submitting to the Regional Director a written application containing the following information:

- (1) The vessel owner's name, mailing address, and telephone number;
- (2) The name of the vessel;
- (3) The vessel's U.S. Coast Guard documentation number or State registration number;
- (4) The home port of the vessel;
- (5) The type of fishing gear to be used;
- (6) The length and net tonnage of the vessel;
- (7) The hull color of the vessel;
- (8) The names of all operators and/or lessees of the vessel;
- (9) Whether the vessel is to be used in fish harvesting, in which case the type of fishing gear to be used must be specified; or for support operations, including the receipt of fish from U.S. vessels at sea; and
- (10) The signature of the applicant.

(d) *Notification of change.* (1) Except as provided in paragraph (d)(2) of this section, any person who has applied for and received a permit under this section must give written notification of any change in the information provided under paragraph (b) of this section to the Regional Director within 30 days of the date of that change.

(2) A permit issued under this section will authorize either harvesting or support operations, but not both. The notification to the Regional Director under paragraph (d)(1) of this section of a change in the type of operations in which that vessel is to engage must be completed before that vessel begins the new type of operation.

(e) *Duration.* A permit will continue in full force and effect through December 31 of the year for which it was issued, or until it is revoked, suspended, or modified under Part 621 (Civil Procedures) of this chapter.

5. In § 672.5, a new paragraph (a)(3) is added to read as follows:

§ 672.5 Reporting requirements.

(a) * * *

(3) *Catcher/processor and mothership/processor vessels.*

The operator of any fishing vessel regulated under this part who freezes or dry-salts any part of its catch of groundfish on board that vessel and retains that fish at sea for a period of more than 14 days from the time it is caught, or who receives groundfish at sea from a fishing vessel regulated under this part and retains that fish at sea for a period of more than 14 days from the time it is received, must, in

addition to the requirements of paragraphs (a)(1) and (a)(2) of this section, meet the following requirements:

(i) Twenty-four hours before starting and upon stopping fishing or receiving groundfish in any area, the operator of that vessel must notify the Regional Director of the date and hour in GMT and the area of such activity. No such operator may retain any part of that vessel's catch or cargo of fish on board that vessel for a period of more than 14 days from the time it was caught or received unless the Regional Director was notified as required under paragraph (a)(3)(iv) of this section during that period.

(ii) When shifting operations to a new area, the operator of that vessel must notify the Regional Director of the date and hour in GMT of beginning fishing or receiving groundfish in the new area and the position of the new activity. The notice must be sent to the Regional Director within 48 hours of shifting.

(iii) The notices required in paragraphs (a)(3) (i) and (ii) of this

section should be sent by private or commercial communications facilities to the U.S. Coast Guard at Juneau, Alaska, who will relay them to the Regional Director. Only if adequate private or commercial communication facilities have not been successfully contacted may the required notices be delivered via the closest Coast Guard communications station.

(iv) After the first catch or receipt of groundfish at sea by that vessel during that period and continuing until that vessel's entire catch or cargo of fish has been off-loaded, the operator of that vessel must submit a weekly catch or receipt report for each weekly period, Sunday through Saturday, GMT, or for each portion of such a period, during which groundfish were caught or received at sea. Catch or receipt reports must be sent to the Regional Director within one week of the end of the reporting period through such means as the Regional Director will prescribe upon issuing that vessel's permit under § 672.4 of this part. These reports must contain the following information:

(A) Name and radio call sign of vessel;

(B) Federal permit number for the Gulf of Alaska groundfish fisheries;

(C) Month and days fished or during which fish were received at sea;

(D) The estimated round weight of all fish caught or received at sea by that vessel during the reporting period by species or species group, rounded to the nearest one-tenth of a metric ton (0.1 mt), whether retained, discarded, or off-loaded;

(E) The area in which each species or species group was caught; and,

(F) If any species or species groups were caught in more than one area during a reporting period, the estimated round weight of each, to the nearest 0.1 mt, by area.

6. In § 672.20, Table 1 in paragraph (a) and paragraph (e) are revised to read as follows:

§ 672.20 Optimum yield.

(a) * * *

TABLE 1—OPTIMUM YIELD (OY), DOMESTIC ANNUAL HARVEST (DAH), DOMESTIC ANNUAL PROCESSING (DAP), JOINT VENTURE PROCESSING (JVP), RESERVE, AND TOTAL ALLOWABLE LEVEL OF FOREIGN FISHING (TALFF), ALL IN METRIC TONS. OY = DAH + RESERVE + TALFF; DAH = DAP + JVP

Species/species code area	OY	DAH	DAP	JVP	Reserve	TALFF
Pollock - 701:						
Western/Central	305,000	256,871	44,371	220,500	0	40,129
Eastern	16,600	13,280	13,280	0	3,320	0
Total	321,600	270,151	57,651	220,500	3,320	40,129
Pacific cod - 702:						
Western	16,560	5,746	2,539	3,209	3,212	7,600
Central	33,540	24,332	19,901	4,431	6,606	2,600
Eastern	9,900	7,920	7,920	0	1,980	0
Total	60,000	38,000	30,360	7,640	11,800	10,200
Flounders - 129:						
Western	10,400	8,320	7,398	922	1,880	200
Central	14,700	11,760	8,292	3,468	2,690	250
Eastern	8,400	6,720	6,720	0	1,680	0
Total	33,500	26,800	22,410	4,390	6,250	450
Pacific ocean perch - 780:						
Western	1,302	1,302	1,302	0	0	0
Central	3,906	3,906	3,906	0	0	0
Eastern	875	875	875	0	0	0
Total	6,083	6,083	6,083	0	0	0
Sablefish - 703:						
Western	1,670	1,670	1,670	0	0	0
Central	3,060	3,060	3,060	0	0	0
West Yakutat	1,680	1,680	1,680	0	0	0
East Yakutat	850 to 1,135	850 to 1,135	850 to 1,135	0	0	0
Southeast Outside	470 to 1,435	470 to 1,435	470 to 1,435	0	0	0
Total	7,330 to 8,960	7,330 to 8,960	7,330 to 8,960	0	0	0
Atka Mackerel - 287:						
Western	4,678	3,742	50	3,692	836	100
Central	500	380	350	30	100	20
Eastern	100	80	80	0	20	0
Total	5,278	4,202	480	3,722	956	120
Other rockfish - 849:						
Central Southeast Outside	600	600	600	0	0	0
Remaining Gulf	4,400	4,133	4,000	133	267	0
Thornyhead rockfish - 749:						
Gulf-wide	3,750	3,000	2,990	10	700	50

TABLE 1—OPTIMUM YIELD (OY), DOMESTIC ANNUAL HARVEST (DAH), DOMESTIC ANNUAL PROCESSING (DAP), JOINT VENTURE PROCESSING (JVP), RESERVE, AND TOTAL ALLOWABLE LEVEL OF FOREIGN FISHING (TALFF), ALL IN METRIC TONS. OY=DAH+RESERVE+TALFF; DAH=DAP+JVP—Continued

Species/species code area	OY	DAH	DAP	JVP	Reserve	TALFF
Squid 509:						
Gulf-wide	5,000	4,000	3,990	10	950	50
Other species ² 499:						
Gulf-wide	22,460	17,944	16,544	1,400	4,191	325

¹ See figure 1 of § 672.20 for description of regulatory areas and districts.

² The category "Pacific ocean perch" includes *Sebastes* species *S. alutus* (Pacific ocean perch), *S. polyspinus* (northern rockfish), *S. aleuticus* (rougeye rockfish), *S. borealis* (shortfin rockfish), and *S. zacentrus* (sharpchin rockfish).

³ Excludes values for the Southeast Inside District, which is not governed by these regulations.

⁴ The category "Other rockfish" includes all fish of the genus *Sebastes* except the category "Pacific ocean perch" as defined in footnote 2 above and *Sebastes* (thornyhead rockfish).

⁵ The category "Other species" includes sculpin, sharks, skates, eulachon smelts, capelin, and octopus. The OY for "Other species" is equal to 5% of the target species.

(e) *Halibut* (1) If during any year, the Regional Director determines that the catch of halibut for that year by U.S. vessels delivering their catch to foreign vessels (JVP vessels) or U.S. vessels delivering their catch to U.S. fish processors (DAP vessels) will reach the applicable prohibited species catch (PSC) limit for halibut established under paragraph (e)(2) of this section, he will publish a notice in the **Federal Register** prohibiting fishing with trawl gear other than off-bottom trawl gear for the rest of the year by the vessels and in the area to which the PSC limit applies, subject to paragraph (e)(2)(iv) of this section.

(2)(i) As soon as practicable after October 1 of each year the Secretary, after consultation with the Council, will publish a notice in the **Federal Register** specifying the proposed halibut PSC limits for JVP vessels and DAP vessels. Each halibut PSC may be apportioned among the regulatory areas and districts of the Gulf of Alaska. Public comments on the proposed halibut PSC limits will be accepted by the Secretary for 30 days after the notice is published in the **Federal Register**. The Secretary will consider all timely comments in determining, after consultation with the Council, the final halibut PSC limits for the next year. A notice of these final halibut PSC limits will be published in the **Federal Register** as soon as practicable after December 15 and will also be made available to the public by the Regional Director through other suitable means.

(ii) the Secretary will base the annual halibut PSC limits upon the following types of information:

(A) Estimated halibut bycatch in prior years;

(B) Expected changes in groundfish catch;

(C) Expected changes in groundcatch biomass;

(D) Current estimates of halibut biomass and stock condition;

(E) Potential impacts of expected fishing for groundfish on halibut stocks and U.S. halibut fisheries;

(F) The methods available for and costs of reducing halibut bycatches in groundfish fisheries; and

(G) Other biological and socioeconomic information that affects the consistency of halibut PSC limits with the objectives of this part.

(iii) The Secretary may, by notice in the **Federal Register**, change the halibut PSC limits during the year for which they were specified, based on new information of the types set forth in paragraph (e)(2)(ii) of this section.

(iv) When the JVP or DAP vessels to which a halibut PSC limit applies have caught an amount of halibut equal to that PSC, the Regional Director may, by notice in the **Federal Register**, allow some or all of those vessels to continue to fish for groundfish using bottom-trawl gear under specified conditions, subject to the other provisions of this part. In authorizing and conditioning such continued fishing with bottom-trawl gear, the Regional Director will take into account the following considerations, and issue relevant findings:

(A) The risk of biological harm to halibut stocks and of socioeconomic harm to authorized halibut users posed by continued bottom trawling by these vessels;

(B) The extent to which these vessels have avoided incidental halibut catches up to that point in the year;

(C) The confidence of the Regional Director in the accuracy of the estimates of incidental halibut catches by these vessels up to that point in the year;

(D) Where observer coverage of these vessels is sufficient to assure adherence to the prescribed conditions and to alert the Regional Director to increase in their incidental halibut catches; and

(E) The enforcement record of owners and operators of these vessels, and the confidence of the Regional Director that adherence to the prescribed conditions can be assured in light of available enforcement resources.

7. A new § 672.23 is added to read as follows:

§ 672.23 Seasons.

(a) Fishing for groundfish in the regulatory areas and districts of the Gulf of Alaska is authorized from January 1 to December 31, subject to the other provisions of this part, except as provided in paragraph (b) of this section.

(b) Directed fishing for sablefish with hook and line and pot gear in the regulatory areas and districts of the Gulf of Alaska is authorized from April 1 through December 31, subject to the other provisions of this part.

8. In § 672.24, the text is designated as paragraph (a) and a new paragraph (b) is added to read as follows:

§ 672.24 Gear limitations.

(b) *Sablefish gear restrictions and allocations.*

(1) *Eastern Area.* No person may use any gear other than hook and line and trawl gear when fishing for groundfish in the Eastern Area. No person may use any gear other than hook and line gear to engage in directed fishing for sablefish. When vessels using trawl gear have harvested as bycatch 5 percent of the OY for sablefish during any year, the Regional Director will close the Eastern Area to all fishing with trawl gear.

(2) *Central and Western Areas.* During 1986 in the Central Area, and during 1986, 1987, and 1988 in the Western Area, hook and line gear may be used to take up to 55 percent of the OY for sablefish; pot gear may be used to take up to 25 percent of that OY; and trawl gear may be used to take up to 20 percent of that OY. After the years specified above, hook and line gear may be used to take up to 80 percent of the sablefish OY in each area and trawl gear may be used to take up to 20 percent of that OY. When the share of the sablefish OY assigned to any type of gear for any year and any area or district under this paragraph has been taken, the Regional Director will close that regulatory area or district to all fishing for groundfish with that type of gear, subject to § 672.20(b) of this part.

No person may use any gear other than hook and line, pot, or trawl gear in fishing for groundfish in these areas during the years specified above. After those years, no person may use any gear other than hook and line or trawl gear in fishing for groundfish in the Gulf of Alaska.

9. In addition to the above amendments, technical changes and corrections are made to read as follows:

§ 672.21 [Amended]

(a) In § 672.2, the definition "ADF" and "G" is changed to "ADF&G".

§ 672.5 [Amended]

(b) In § 672.5(a)(1), (a)(1)(i)(A) and (B), and (a)(2)(ii), the acronym "ADF and G" is changed to "ADF&G", and in

§ 672.5(a)(2)(i), the phrase "Alaska Department of Fish and Game" is changed to "ADF&G".

§ 672.20 [Amended]

(c) In § 672.20(a)(1), the words "(OY), reserves, DAH, domestic annual processing (DAP), JVP, and the TALFF" are corrected to read "OY, reserves, DAH, domestic annual processing (DAP), joint venture processing (JVP), and TALFF".

(d) In § 672.20(a)(2) and (c)(4)(iv)(A)(3), the words "rule-related" are removed.

(e) In § 672.20(d)(4) and in § 672.22(b)(6), the designation "Table 1" is changed to "Table 1".

(f) In § 672.20(e) (1) and (2) and in § 672.22(b)(5) and (c), the phrase "field order" is changed to "notice".

§ 672.22 [Amended]

(g) In § 672.22(a)(2), the phrase "field order" is changed to "notice of closure"; and in § 672.22(b)(6), the phrase "optimum yield" is changed to "OY".

§ 672.25 [Amended]

(h) *Section 672.25 Disposal of fishing gear and other articles* is added and reserved.

§ 672.25 Disposal of fishing gear and other articles. [Reserved]

[FR Doc. 85-25143 Filed 10-18-85; 8:45 am]

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Proposed Rules

Federal Register

Vol. 50, No. 206

Thursday, October 24, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 70

Voluntary Standards and Grades for Poultry

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the regulations for the voluntary grading of poultry products and rabbit products, the voluntary U.S. standards and grades for poultry products, and establish a grade standard for raw poultry meat. In conformity with the requirements for the periodic review of existing regulations, the Agency has reviewed the regulations governing the voluntary grading of poultry products and rabbit products and U.S. classes, standards, and grades. As a result of the review, certain changes in the regulations are being proposed. More specifically, these changes would (1) revise the existing standards for quality of boneless poultry breasts and thighs to permit the grading of other boneless poultry; (2) clarify the standards for ready-to-cook poultry carcasses and parts; (3) establish a new standard for quality of raw boneless-skinless poultry products (poultry meat); (4) reflect current poultry production and marketing practices; (5) improve the effectiveness of the poultry grade standards in meeting the needs of the various users of the grading service; (6) provide flexibility in color requirements of the official identification symbol and grademark for poultry products and rabbit products; and (7) remove the U.S. Grade A—For Further Processing for ready-to-cook turkey carcasses. The effect of this proposed rule would be to simplify the interpretation of the poultry grade standards, improve the uniformity of their application, and strengthen their effectiveness. The proposed changes for poultry products would give industry

more flexibility in marketing different types of graded poultry products and provide consumers a larger variety of U.S. Department of Agriculture (USDA) graded poultry products from which to choose.

DATES: Comments must be received on or before December 23, 1985.

ADDRESS: Written comments may be mailed to D.M. Holbrook, Chief, Standardization Branch, Poultry Division, Agricultural Marketing Service, Room 3944, South Agriculture Building, Washington, DC 20250. (For further information regarding comments, see "Comments" under **SUPPLEMENTARY INFORMATION**.)

FOR FURTHER INFORMATION CONTACT: M.L. Nichols, Jr., Assistant Chief, (202) 447-3506.

SUPPLEMENTARY INFORMATION: **Executive Order 12291**

An initial determination has been made that this proposed rule is not a major rule under Executive Order 12291. It will not result in an annual effect on the economy of \$100 million or more; result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Also, pursuant to this Executive Order, it has been determined there will be no effect on trade sensitive activities.

This proposed regulation has been reviewed for cost effectiveness under USDA Secretary's Memorandum 1512-1 implementing Executive Order 12291. It would simplify the interpretation of the poultry grade standards, improve their uniformity of application, strengthen their effectiveness, provide consumers with a larger variety of USDA graded poultry products, and provide new and revised standards for poultry products which reflect current production and marketing practices. As such, it is anticipated that the proposed revisions would result in no monetary costs or other adverse impacts offsetting the expected benefits. Alternatively, the Agency could retain the existing standards, but adherence to these standards would result in similar costs

with no offsetting product quality benefits and would not provide uniform quality standards for new poultry products.

Effect on Small Entities

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this proposed action will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), because the revisions would reflect current production and marketing practices, and the use of the grading service is voluntary.

Comments

Interested persons are invited to submit written comments concerning these proposed revisions. Comments must be sent in duplicate to the Standardization Branch and should bear a reference to the date and page number of this issue of the *Federal Register*. Comments submitted on these proposed revisions will be made available for public inspection in the Washington, D.C., Standardization Branch during regular business hours.

Regulation Review

Periodically the Poultry Division of the Agricultural Marketing Service (AMS) reviews its existing regulations to determine their adequacy, clarity, and currentness. In conjunction with these periodic reviews, a review of the regulations for voluntary grading of poultry products and rabbit products, 7 CFR Part 70, was conducted in accordance with the requirements of Executive Order 12291. Under the executive order, the regulations were examined for their need and for ways to maximize net benefits and to assure that benefits outweigh potential costs.

As a result of the review, it was determined that several revisions could be made to make the poultry grade standards and the regulations for grading poultry products and rabbit products more useful and efficient. Moreover, these revisions would improve effectiveness without increasing costs. Further details are set forth under the **Proposed Revisions** section heading.

Background

The grading of poultry and rabbits by the AMS is a voluntary program, provided under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*), and is offered on a fee-for-service basis. The grading program is designed to assist orderly marketing of poultry products and rabbit products. In order to continue equity among all persons affected by grade standards, from the producer to the consumer, the standards must keep abreast of changes in consumer preferences and industry production and marketing practices. In 1965, the standards for poultry carcasses were revised and a standard for raw poultry roast established. Standards were established for poultry parts and boneless breasts and thighs in 1969, so they could be graded on an individual basis after being separated from the carcass. Since then, there have been changes in consumer preferences such as greater utilization of convenience foods. During this period, constant innovations and accomplishments have occurred within the poultry industry: (1) improved quality and uniformity (conformation and fleshing through technological advances and efficient production practices); (2) new processing techniques; (3) effective automation; (4) new products; and (5) new marketing trends.

Quality in practical terms refers to the usability, desirability, and value of a product (marketability). Grade standards identify and measure degrees of quality. Also, standards permit important quality attributes to be evaluated rapidly accurately. For grading to be conducted as accurately and uniformly as possible and to be more useful to both industry and consumers, the Agency is proposing changes to keep pace with advancements and trends and to maximize the cost effectiveness of the poultry grade standards and the regulations.

Proposed Revisions

The Agency is proposing to amend the U.S. standards and grades for poultry products in 7 CFR Part 70 to (1) revise the existing standard for quality of boneless breasts and thighs to permit the grading of other boneless poultry; (2) reflect the advancements in poultry production and marketing practices; (3) provide a new standard for quality of raw boneless-skinless poultry products (poultry meat); (4) clarify the standards for poultry products to improve interpretation and uniformity of application; (5) make editorial changes

for consistency within the standards for poultry products and with applicable definitions in the Poultry Products Inspection Regulations (9 CFR Part 381); and (6) remove the U.S. Grade A—For Further Processing for ready-to-cook turkey carcasses (§ 70.260) because this grade is obsolete and no longer used.

New poultry products are constantly being developed to meet the needs of consumers. Institutions and individual consumers desire poultry products which are convenient and permit flexible menu planning. The Agency's poultry grade standards have not kept pace with these trends. The industry has asked the Agency to develop standards for grading new types of poultry products. Ultimately, such poultry grade standards would assure the consumer of a uniform quality product.

This proposal would revise the existing standard for raw boneless breasts and thighs (§ 70.231) to permit the grading of other raw boneless poultry and poultry products. Also, a new standard (§ 70.235) for quality of raw boneless-skinless poultry products (poultry meat) would be established to allow the grading and U.S. grade identification of these poultry products. The proposed and revised standard would provide for the grading of raw (1) boneless poultry, and (2) boneless-skinless poultry products (poultry meat) without added ingredients. These products may be deboned parts, muscle portions, or subdivided pieces (fillets, slices, cubes, nuggets, etc.) provided they are labeled in accordance with 9 CFR Part 381, Poultry Products Inspection Regulations. Each specific product could be any size or shape as long as such size and shape permit a determination of the quality factors for the grade. After the specific product has been graded, it may be further ground or shredded, etc. Advances in poultry production practices have improved the uniformity of conformation, fleshing, and fat covering in ready-to-cook poultry. Because of this uniformity, these criteria have become insignificant for boneless or boneless-skinless poultry products and are only considered when appropriate.

These poultry products standards would give industry more flexibility in marketing different types of graded poultry products and consumers a larger variety of USDA graded poultry products from which to choose.

The wording of the tolerance for exposed flesh and discoloration in the standards for ready-to-cook poultry carcasses and parts (§§ 70.220 and 70.221) would be clarified. These clarifications of the standards would

improve their uniformity of application and simplify their interpretation.

The tolerances for exposed flesh and discoloration for the various grades of ready-to-cook poultry carcasses are based on the location and the size of the defect. Similarly, the size of the defect permitted on a carcass is based on the weight of the ready-to-cook poultry carcass (weight range §§ 70.220 and 70.221 (e) and (g)). The proposed revisions would increase the "1 lb 8 oz" lower end of the weight range to "2 lb". The new weight range would more accurately reflect the ready-to-cook weight range for Cornish game hens and Rock Cornish game hens. Essentially, these are the major types of poultry graded in this weight range class.

In addition, the Agency is proposing to amend the regulations for the voluntary grading of poultry products and rabbit products in 7 CFR Part 70 to permit an alternate method of showing the USDA identification symbol and grademark for flexibility and compatibility with various colors of packaging materials. Styles of packaging are constantly changing and a variety of color combinations are used. The regulations only authorize the USDA grademark for poultry products and rabbit products to be printed with the letters "USDA" and the U.S. grade of the product in a light color on a dark field (§ 70.51). To permit flexibility and innovation, the proposed revision would provide an alternative. The grademark could be printed with the shield in a dark color and the wording within the shield in a light color or the shield in a light color and the wording within the shield in a dark color. Either option may be used provided the design is legible and conspicuous. A new example of the grademark would be shown in § 70.51.

Various miscellaneous changes are proposed to (1) clarify the regulations, (2) remove obsolete material, (3) correct erroneous wording, and (4) update and simplify the regulations. These changes are editorial or housekeeping in nature, provide helpful clarification, and impose no new requirements.

Paperwork Reduction Act

This proposed rule would not change or require any additional collection of information from the public under the Paperwork Reduction Act of 1980, 44 U.S.C. Chapter 35. Existing information collection requirements in 7 CFR Part 70 have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and assigned OMB control number 0581-0127.

List of Subjects in 7 CFR Part 70

Poultry, Poultry products, Rabbit products, Voluntary grading service.

PART 70—VOLUNTARY GRADING OF POULTRY PRODUCTS AND RABBIT PRODUCTS AND U.S. CLASSES, STANDARDS, AND GRADES

It is proposed to amend Title 7 of the Code of Federal Regulations as follows:

1. The authority citation for Part 70 continues to read as follows:

Authority: Secs. 202-208 of the Agricultural Marketing Act of 1946, as amended (60 Stat. 1087-1091; 7 U.S.C. 1621-1627).

2. In § 70.1, the definition for "Ready-to-Cook Poultry" is revised to read as follows:

§ 70.1 Definitions.

"Ready-to-Cook Poultry" means any slaughtered poultry free from protruding pinfeathers, vestigial feathers (hair or down as the case may be) and from which the head, feet, crop, oil gland, trachea, esophagus, entrails, mature reproductive organs, and lungs have been removed, and the kidneys have been removed from certain mature poultry as defined in 9 CFR Part 381, and with or without the giblets, and which is suitable for cooking without need of further processing. Ready-to-cook poultry also means any cut-up or disjointed portion of poultry or other parts of poultry as defined in 9 CFR Part 381 that are suitable for cooking without need of further processing.

3. Section 70.15 is amended by revising paragraphs (c) and (d) to read as follows:

§ 70.15 Equipment and facilities to be furnished for use of graders in performing services on a resident basis.

(c) Scales graduated in ounces or less for weighing individual birds and in one-quarter or less for containers of product up to 100 pounds and test weights for such scales.

(d) Scales graduated in one-pound graduation or less for weighing bulk containers of poultry and test weights for such scales.

4. Section 70.51 is amended by revising paragraph (a) and Figure 3 and by removing paragraph (d) and Figure 4 as follows:

§ 70.51 Marking graded products.

(a) *Information required on grademark.* Except as otherwise authorized by the Administrator, each grademark, which is to be used, shall

include the letters "USDA" and the U.S. Grade of the product it identifies, such as "U.S. A Grade," and such information shall be printed with the shield in a dark color and the wording within the shield in a light color or the shield in a light color and the wording within the shield in a dark color, provided that such design is legible and conspicuous on the material upon which it is printed. In addition, a term, such as "Federal-State Graded," or "Government Graded," may be used adjacent to but not within the grademark.



Figure 3

5. Section 70.80 is amended by revising the text and removing the footnote to read as follows:

§ 70.80 General.

Whenever grading service is provided for examination of quality, condition, or for test weighing on a representative sample basis, such sample shall be drawn and consist of not less than the minimum number of containers indicated in the following table. The number of representative samples for large bulk containers (combo bins, tanks, etc.) may be reduced by one-half. For quality or condition, all of the poultry and rabbits in each representative sample shall be examined except for individual ready-to-cook carcasses weighing under 6 pounds in large bulk containers. For individual carcasses weighing under 6 pounds in large containers, 100 carcasses shall be examined for quality or condition. Procedures for test weighing shall be in accordance with those prescribed by the Administrator.

6. Section 70.81 is amended by revising paragraph (b) to read as follows:

§ 70.81 Ready-to-cook poultry and rabbits and specified poultry food products.

(b) Only when ready-to-cook poultry carcasses, parts, poultry food products, including those used in preparing raw poultry food products, have been graded on an individual basis by a grader or by an authorized person pursuant to § 70.20(c) and thereafter checkgraded by a grader, and when poultry food products have been prepared under the supervision of a grader, may the individual container, carcass, part, or poultry food product be identified with the appropriate official letter grademark. Checkgrading will be accomplished in accordance with a statistical sampling plan prescribed by the Administrator. Grading with respect to quality factors for freezing defects and appearance of the finished products may be done on a sample basis in accordance with a plan prescribed by the Administrator.

7. Section 70.91 is amended by revising paragraph (b) to read as follows:

§ 70.91 Issuance and disposition.

(b) *Other than resident grading.* Each grader shall, in person or by his authorized agent, issue a grading certificate covering each product graded by him. A grader's name may be signed on a grading certificate by a person other than the grader if such person has been designated as the authorized agent of such grader by the national supervisor: *Provided*, That the certificate is prepared from an official memorandum of grading signed by the grader.

8. Section 70.110 is amended by revising the section heading and paragraph (a) to read as follows:

§ 70.110 Requirements for sanitation, facilities, and operating procedures in official plants.

(a) The requirements for sanitation, facilities, and operating procedures in official plants shall be the applicable provisions stated in 9 CFR Part 381 for poultry, and for rabbits the requirements shall be the applicable provisions stated in 9 CFR Part 354.

9. In § 70.210, paragraphs (a) and (b) are amended by removing "§§ 70.210 through 70.231" and, inserting in their place "§§ 70.210 through 70.235", and paragraph (e)(2) is revised to read as follows:

§ 70.210 General.

(e) * * *

(2) "Breasts with ribs" shall be separated from the back at the junction of the vertebral ribs and back. Breasts with ribs may be cut along the breastbone to make approximately equal halves; or the wishbone portion, as described in paragraph (e)(3) of this section, may be removed before cutting the remainder along the breastbone to make three parts. Pieces cut in this manner may be substituted for lighter or heavier pieces for exact weightmaking purposes, and the package may contain two or more of such parts without affecting the appropriateness of the labeling as "breast with ribs." Neck skin shall not be included, except that "turkey breasts with ribs" may include neck skin up to the whisker.

10. Section 70.220 is amended by revising paragraphs (e) and (g) to read as follows:

§ 70.220 A Quality.

(e) *Exposed flesh.* Parts are free of exposed flesh, resulting from cuts, tears, and missing skin (other than slight trimming on the edge). The carcass is free of these defects on the breast and legs. Elsewhere, the carcass may have cuts or tears that do not expand or significantly expose flesh, provided the aggregate length of all such cuts and tears does not exceed three-quarter inch for poultry weighing up to 2 pounds; 1½ inches for poultry weighing over 2 pounds, but not more than 6 pounds; 2 inches for poultry weighing over 6 pounds, but not more than 16 pounds; and 3 inches for poultry weighing over 16 pounds. The carcass may have exposed flesh elsewhere other than on the breast and legs due to slight cuts, tears, and areas of missing skin, provided the aggregate area of all exposed flesh does not exceed an area equivalent to the area of a circle of the diameter specified in the following table:

Carcass weight		Maximum aggregate area permitted	
Minimum	Maximum	Breast and legs	Elsewhere
None	2 lb.	None	¼ in.
Over 2 lb.	6 lb.	do	1½ in.
Over 6 lb.	16 lb.	do	2 in.
Over 16 lb.	None	do	3 in.

(g) *Discoloration of the skin and flesh.* The carcass or part is practically free of such defects. Discolorations due to bruising shall be free of clots (discernible clumps of red or dark cells).

Evidence of incomplete bleeding, such as more than an occasional slightly reddened feather follicle, is not permitted. Flesh bruises and discolorations of the skin, such as "blue back," are not permitted on the breast or legs of the carcass, or on these individual parts, and the only lightly shaded discolorations are permitted elsewhere. The total areas affected by flesh bruises, skin bruises, and discolorations, such as "blue back," singly, or in any combination, shall not exceed one-half of the total aggregate area of permitted discoloration. The aggregate area of all discolorations for a part shall not exceed an area equivalent to the area of a circle one-fourth inch in diameter for poultry weighing up to 6 pounds and one-half inch in diameter for poultry weighing over 6 pounds. The aggregate area of all discolorations for a carcass shall not exceed an area equivalent to the area of a circle of the diameter specified in the following table:

Carcass weight		Maximum aggregate area permitted	
Minimum	Maximum	Breast and legs	Elsewhere
None	2 lb.	½ in.	1 in.
Over 2 lb.	6 lb.	1 in.	2 in.
Over 6 lb.	16 lb.	1½ in.	2½ in.
Over 16 lb.	None	2 in.	3 in.

11. Section 70.221 is amended by removing the table in paragraph (e), and revising paragraphs (d), (e), and (g) to read as follows:

§ 70.221 B Quality.

(d) *Defeathering.* The carcass or part may have a few nonprotruding pinfeathers or vestigial feathers which are scattered sufficiently so as not to appear numerous. Not more than an occasional protruding pinfeather or diminutive feather shall be in evidence.

(e) *Exposed flesh.* A carcass may have exposed flesh, provide that no part on the carcass has more than one-third of the flesh exposed, and the meat yield of any such part on the carcass is not appreciably affected. A part may have no more than one-third of the flesh normally covered by skin exposed. A moderate amount of meat may be trimmed around the edges of a part to remove defects.

(g) *Discoloration of skin and flesh.* The carcass or part is free of serious defects. Discoloration due to bruising shall be free of clots (discernible clumps of red or dark cells). Evidence of incomplete bleeding shall be no more

than very slight. Moderate areas of discoloration due to bruises in the skin or flesh and moderately shaded discoloration of the skin, such as "blue back" are permitted, but the total areas affected by such discolorations, singly or in any combination, may not exceed one-half of the total aggregate area of permitted discoloration. The aggregate area of all discolorations for a part shall not exceed an area equivalent to the area of a circle having a diameter of one-half inch for poultry weighing up to 2 pounds; 1 inch for poultry weighing over 2 pounds, but not more than 6 pounds; and 1½ inches for poultry weighing over 6 pounds. The aggregate area of all discolorations for a carcass shall not exceed an area equivalent to the area of a circle of the diameter specified in the following table:

Carcass weight		Maximum aggregate area permitted	
Minimum	Maximum	Breast and legs	Elsewhere
None	2 lb.	1 in.	2 in.
Over 2 lb.	6 lb.	2 in.	3 in.
Over 6 lb.	16 lb.	2½ in.	4 in.
Over 16 lb.	None	3 in.	5 in.

12. Section 70.222 is amended by revising paragraph (c) to read as follows:

§ 70.222 C Quality.

(c) C Quality backs shall include all the meat and skin from the pelvic bones, except that the meat contained in the ilium (oyster) may be removed. The vertebral ribs and scapula with meat and skin and the backbone located anterior (forward) of the ilia bones may also be removed (front half of back).

13. Section 70.230 is amended by revising the introductory text and paragraphs (a), (b), and (e) to read as follows:

§ 70.230 Poultry roast—A Quality.

The standard of quality contained in this section is applicable to raw poultry products labeled in accordance with 9 CFR Part 381 as ready-to-cook "Roasts" or similar descriptive terminology.

(a) The deboned poultry meat used in the preparation of the product shall be from young poultry.

(b) Bones, tendons, cartilage, blood clots, and discolorations shall be removed from the meat.

(e) The product shall be fabricated in such a manner that the product can be easily sliced after cooking and each slice remains substantially intact so

each slice can be readily served with minimal separation.

14. Section 70.231 is amended by revising the section heading and the text of the section to read as follows:

§ 70.231 Boneless poultry—A Quality.

The standards of quality contained in this section are applicable to raw ready-to-cook boneless poultry and poultry products without added ingredients labeled in accordance with 9 CFR Part 381.

(a) The boneless poultry may be derived from ready-to-cook poultry carcasses or parts as described in § 70.210(e).

(b) Skin shall be attached to each piece of boneless poultry. The skin shall be intact and free from cuts, tears, discolorations, blemishes, pinfeathers, feathers, and hair.

(c) Bones, tendons, cartilage, blood clots, and discolorations shall be removed from the meat. When boneless poultry is cut as specified in § 70.210(e) and is not further subdivided, only slight trimming around the edges of the skin and meat or the inner muscle surface is permitted to remove defects.

(d) Boneless poultry cut as specified in § 70.210(e) which is not further subdivided shall be free of undue muscle mutilation. Minor cuts, tears, or abrasions resulting from preparation techniques may be permitted when approved in writing by the national supervisor: *Provided*, That they do not appreciably detract from the appearance of the product.

(e) The boneless poultry with skin may be subdivided by cutting or other similar means: *Provided*, That the individual pieces are of sufficient size and shape to determine grade with respect to the quality factors set forth in this section. After grading, these products may be ground or shredded or subjected to similar types of processing.

15. A new section 70.235 is added to read as follows:

§ 70.235 Boneless-skinless poultry products—A Quality.

The standards of quality contained in this section are applicable to raw ready-to-cook boneless-skinless poultry products (poultry meat) without added ingredients labeled in accordance with 9 CFR Part 381.

(a) The boneless-skinless poultry product (poultry meat) may be derived from ready-to-cook poultry carcasses or parts as described in § 70.210(e).

(b) The boneless-skinless poultry product may be subdivided by cutting, slicing, cubing, or other similar means prior to grading. Such meat shall be

graded prior to grinding, shredding, or other similar types of processing. Individual subdivided pieces of poultry meat must be of sufficient size and shape to determine grade with respect to the quality factors set forth in this section.

(c) Products products cut as specified in § 70.210(e) which are not further subdivided shall be free of undue muscle mutilation. Minor cuts, tears, or abrasions resulting from preparation techniques may be approved in writing by the national supervisor: *Provided*, That they do not appreciably detract from the appearance of the product.

(c) Bones, tendons, cartilage, blood clots, and discolorations shall be removed from the meat. When the meat is cut as specified in § 70.210(e) and is not further subdivided, only slight trimming around the edges or inner muscle surface is permitted to remove defects.

16. Section 70.240 is revised to read as follows:

§ 70.240 General.

(a) All terms in the United States standards for quality set forth in §§ 70.210 through 70.235 shall, when used in §§ 70.240 through 70.271, have the same meaning as when used in said standards.

(b) The United States Grades for ready-to-cook poultry and specified poultry food products are applicable to poultry of the kinds and classes set forth in §§ 70.200 through 70.206 when used as described in paragraphs (c) and (d) of this section.

(c) United States Consumer Grades for ready-to-cook poultry and specified poultry food products may be assigned only (1) when each carcass, part, or poultry food product, including those used in preparing a poultry food product, has been graded in an unfrozen state on an individual basis by a grader or by an authorized person pursuant to § 70.20(c) and thereafter checkgraded by a grader; (2) when applicable poultry food product has been prepared under the supervision of a grader; and (3) when identified in an unfrozen state.

(d) United States Procurement Grades may be assigned to a lot of ready-to-cook poultry when (1) graded as a lot on the basis of an examination of each carcass or part in the lot by a grader or by an authorized person pursuant to § 70.20(c) and thereafter checkgraded by a grader, or (2) graded on the basis of an examination of each carcass or part in a representative sample from the lot by a grader. Such ready-to-cook poultry carcasses or parts may be graded in a frozen or unfrozen state.

17. Section 70.260 and the preceding undesignated center heading are removed.

United States Ready-to-Cook Grade for Further Processing [Removed]

§ 70.260 [Removed]

18. Section 70.270 is revised to read as follows:

§ 70.270 U.S. Procurement Grade I.

Any lot of ready-to-cook poultry composed of one or more carcasses or parts of the same kind and class may be designated and identified as U.S. Procurement Grade I when:

(a) 90 percent or more of the carcasses or parts in such lot meet the requirements of A quality, with the following exceptions: (1) Fat covering and conformation may be as described in this subpart for B quality; (2) trimming of the skin and flesh to remove defects is permitted to the extent that not more than one-third of the flesh is exposed on a separated part or on any part on a carcass, and the meat yield of a separated part or any part on a carcass is not appreciably affected; (3) discoloration of the skin and flesh may be as described in this subpart for B quality; (4) one or both drumsticks on a carcass may be removed if the part is severed at the joint; (5) the back on a carcass may be trimmed in an area not wider than the base of the tail and extending to the area between the hip joints; (6) the wings or parts of wings on a carcass may be removed if severed at a joint; and

(b) The balance of the carcasses or parts meet the same requirements except they may have only a moderate covering of flesh.

19. Section 70.271 is revised to read as follows:

§ 70.271 U.S. Procurement Grade II.

Any lot of ready-to-cook poultry composed of one or more carcasses or parts of the same kind and class which fails to meet the requirements of U.S. Procurement Grade I may be designated and identified as U.S. Procurement Grade II, provided that (a) trimming of flesh from a separated part or from any part on the carcass does not exceed 10 percent of the meat; and (b) portions of a carcass weighing not less than one-half of the whole carcass may be included, if the portion approximates in percentage the meat to bone yield of the whole carcass.

Done at Washington, D.C., on October 18, 1985.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 85-25383 Filed 10-23-85; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 353

Reports of Crimes Affecting Insured Nonmember Banks; Notification of Change in Fidelity Bond Coverage

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Proposed rule.

SUMMARY: The FDIC is proposing to add Part 353 to its regulations to require insured nonmember banks to report, on a prescribed form, criminal violations of the United States Code that involve or affect such banks to the appropriate investigatory and prosecuting authorities, as well as to the FDIC. Robberies, burglaries and nonemployee larcenies, which are subject to the requirements of 12 CFR 326.5(c), are exempt from the requirements of the proposed rule. The central purpose of the report form requirement is to assure that the information needed by investigators and prosecutors for effective law enforcement is provided in an orderly and timely fashion. Also, the FDIC, by receiving a copy of the reports, will be better able to monitor, and to act to reduce, losses to insured nonmember banks as a result of criminal activity. The proposed rule also requires, in the interest of reducing losses, that an insured nonmember bank notify the FDIC if its fidelity bond against defalcations and similar losses is cancelled or if the coverage is changed significantly.

DATE: Comments must be received by November 25, 1985.

ADDRESS: Send comments to Hoyle L. Robinson, Executive Secretary, FDIC, 550 17th Street, NW., Washington, D.C. 20429. Comments should reference the date and page number of this issue of the Federal Register and will be made available for public inspection during normal business hours at the Office of the Executive Secretary.

FOR FURTHER INFORMATION CONTACT: James R. Dudine, Chief, Special Activities Section, Division of Bank Supervision, FDIC, 550 17th Street, NW., Washington, D.C. 20429; (202) 389-4412.

SUPPLEMENTARY INFORMATION: The directors of an insured nonmember bank are obligated, by virtue of their fiduciary

duties, to cause reports of crimes against the bank to be made to the cognizant investigatory and prosecuting authorities. The FDIC, in the course of exercising its supervisory responsibilities and in the interest of safety and soundness, presently monitors the fulfillment of this obligation through the bank examination process. In view of the threat of increasing bank losses through criminal activity, particularly through crimes involving "insiders", the proposed rule formalizes the crime reporting requirement, improves the quality and usefulness of crime reports by specifying the information needed for effective law enforcement, and enhances the ability of the FDIC to monitor, and to act to reduce, losses to banks through criminal activity. The proposed rule, including the report form, results from the work and recommendations of an interagency group comprised of representatives of the Federal financial institutions regulatory agencies, the U.S. Department of Justice, Criminal Division, and the Federal Bureau of Investigation. A short version of the report form is specified for crimes involving a loss of under \$10,000 and not involving an executive officer, director or principal shareholder as defined in 12 CFR 215.2 (with the term "member bank" deemed to mean "insured nonmember bank").

The directors of an insured nonmember bank are also obligated, by virtue of their fiduciary duties (see also 12 U.S.C. 182(e)), to provide protection and indemnity against defalcations and other similar losses. In order to enable the FDIC in the exercise of its supervisory responsibilities, to monitor more effectively the fulfillment of this obligation, the proposed rule also requires each such bank to notify the FDIC if its fidelity bond is cancelled or if the coverage is changed significantly.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601-12), the Board of Directors certifies that the proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

Inasmuch as the proposed rule formalizes the existing obligations of insured nonmember banks to report criminal violations, the additional burden placed upon most such institutions by this requirement would not be significant. Similarly, the requirement that the FDIC be notified if an insured nonmember bank's fidelity bond is cancelled or the coverage changed significantly would place no

additional significant burden upon most such institutions; properly run institutions would generally not be affected at all by this requirement. The reporting and notification requirements in the proposed rule were submitted to the Office of Management and Budget for review pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3504(h)).

List of Subjects in 12 CFR Part 353

Banks, Banking, State nonmember banks, Reporting and recordkeeping requirements.

Accordingly, the FDIC proposes to add Part 353 to Title 12, CFR, as follows:

PART 353—REPORTS OF APPARENT CRIMES AFFECTING INSURED NONMEMBER BANKS: NOTIFICATION OF CHANGE IN FIDELITY BOND COVERAGE

Sec.

353.0 Purpose and scope.

353.1 Reports and records.

353.2 Notice of bond coverage change.

Appendix A—Form 6710/06 and 6710/06A.

Report of Apparent Crime (Short Form and Long Form), and instructions for its preparation and filing.

Authority: 12 U.S.C. 1818, 1819, 1828.

§ 353.0 Purpose and scope.

The purpose of this part is to reduce losses to insured nonmember banks resulting from criminal violations of the U.S.C. involving or affecting the assets or affairs of such banks through the requirement of prompt and systematic reports by such banks of such crimes or attempted crimes. This part complements, and does not supplant any of the requirements of Part 326. Neither the particular requirements of this part nor of Part 326 shall be construed as reducing in any way the general responsibility of insured nonmember banks to report apparent criminal violations to the appropriate investigatory and prosecuting authorities. This part also requires, in the interest of reducing losses to insured nonmember banks, that the FDIC be notified of changes in the fidelity bond coverage of such banks.

§ 353.1 Reports and records.

(a) Whenever it appears that a criminal violation of the U.S.C. involving or affecting the assets or affairs of an insured nonmember bank (excluding a Federal savings bank) has been committed or attempted, then the bank (using Form 6710/06 or 6710/06A and the instructions therefor, appearing in Appendix A) shall promptly report the apparent violation to the appropriate

field office of the Federal Bureau of Investigation, to the appropriate office of the United States Attorney, as well as to the appropriate office of the state prosecuting attorney if a state law violation may be involved, and to the regional director (Division of Bank Supervision (DBS)) of the FDIC region in which the bank is located. The bank shall maintain a copy of each such report in its records. Doubts as to whether a report should be filed in any particular case should be resolved in favor of doing so. The fact that a report is required by this part should not in any case deter a bank from first informing the appropriate authorities by telephone, or other expeditious means, of an apparent violation, when such action is deemed fitting.

(b) Robberies, burglaries and nonemployee larcenies, which are subject to the requirements of 12 CFR 326.5(c), are exempt from the requirements of this part.

(c) Supplies of Form 6710/06 and 6710/06A can be obtained from the FDIC regional office (DBS), which will also provide, if needed, the addresses of the investigatory and prosecuting authorities with which reports required by this part are to be filed.

§ 353.2 Notice of bond coverage change.

Each insured nonmember bank shall immediately notify the regional director (DBS) of the FDIC region in which the bank is located if its fidelity bond (or similar coverage) providing protection

and indemnity against burglary, defalcation and other similar insurable losses is cancelled or if the coverage provided is changed significantly. Doubts as to whether notification should be made in any particular case should be resolved in favor of doing so.

Appendix A—Form 6710/06 and 6710/06A, Report of Apparent Crime (Short Form and Long Form), and Instructions for Its Preparation and Filings.

By Order of the Board of Directors, October 15, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,
Executive Secretary.

BILLING CODE 6714-01-M

OMB No. 3064-0077
Expiration Date: 7/31/88REPORT OF APPARENT CRIME
(SHORT FORM)

Federal Deposit Insurance Corporation

ATTENTION:

Use this form only if suspected criminal activity involves actual or probable loss or mysterious disappearances of less than \$10,000 (prior to any recovery or reimbursement) not involving an executive officer, director or principal shareholder of the institution within the meaning of 12 C.F.R. §215 (with the term "member bank" deemed to mean "insured nonmember bank"). All other referrals should be submitted on FDIC Form 6710/06A, Report of Apparent Crime [Long Form]. This form should be promptly filed by the bank, but no later than fourteen business days following discovery of the suspected violation.

1 Name and Location of Financial Institution

NAME _____

LOCATION _____ STREET _____ CITY _____ ST. _____ ZIP _____

CERTIFICATE NUMBER _____ If activity occurred at branch office, please identify _____

2 Asset Size of Financial Institution (millions of dollars) _____

3 Approximate date and dollar amount of suspected violation

DATE _____ AMOUNT (thousands of dollars) _____
Month Day Year

4 Summary characterization of the suspected violation. Check appropriate box(es)

☐ Defalcation/Embezzlement ☐ Bribery/Gratuity ☐ Other (Describe) _____
☐ False Statement ☐ Misuse of Position or Self Dealing _____
☐ Check Kiting ☐ Mysterious Disappearance _____

Applicable Section(s) of the U.S. Code (if known). (See list on page 4) _____

5 This matter is being referred to the FBI in _____ CITY _____ ST. _____

and the U.S. Attorney in _____ CITY _____ ST. _____ JUDICIAL DISTRICT (if known) _____

6 Person(s) Suspected of Criminal Violation (if more than one, use continuation sheet)

a. NAME _____ FIRST _____ MI _____ LAST _____

ADDRESS _____ STREET _____ CITY _____ ST. _____ ZIP _____

DATE OF BIRTH _____ SOCIAL SECURITY NO. _____
(if known) Month Day Year (if known)

b. Relationship to the financial institution (check all applicable blocks)

☐ Officer ☐ Employee ☐ Broker ☐ Shareholder
☐ Director ☐ Agent ☐ Borrower ☐ Other, Specify _____

c. Is person still affiliated with the financial institution ☐ Yes ☐ NoIf no, ☐ terminated ☐ resigned. DATE _____
Month Day Year

Describe Circumstances (if necessary, use continuation sheet) _____

d. Prior or related referrals ☐ Yes ☐ No If yes, please identify _____

e. Is person affiliated with any other financial institution ☐ Yes ☐ No or business enterprise ☐ Yes ☐ No If yes to either or both, please identify _____

7 Explanation/Description of Suspected Violation: (Give brief summary of the suspected violation, explaining what is unusual or irregular about the transaction.) (If necessary, use continuation sheet.)

8 Has there been a confession? ☐ Yes ☐ No If so, by whom? _____

9 Offer of Assistance

The individuals listed below are/will be authorized to discuss this referral with FBI and Department of Justice officials and to assist in locating or explaining any documents pertinent to this referral. **provided that contact is first made with**

Name _____ Position _____

Phone No. _____

Name _____ Tele. No. _____

Name _____ Tele. No. _____

Name _____ Tele. No. _____

10 Form Prepared by _____

Position _____

Agency/Institution _____

Phone No. _____ Date _____

DISTRIBUTION:
If Made By Financial Institution

1. Retain one copy in bank's files.
2. Send one copy to Regional Director, Federal Deposit Insurance Corporation.
3. Send one copy to the nearest office of the FBI.
4. Send one copy to nearest office of the U.S. Attorney.
5. If the violation involves 31 CFR 103, send one copy to the local IRS office, Criminal Investigation Division.

DISTRIBUTION BY EXAMINER/REGION
If Made by FDIC

Examiner

1. Retain one copy in field office file under name of the institution.
2. Send original to the Regional Office.

Regional Office

3. Retain one copy in Regional Office under name of the institution.
4. Send one copy to the nearest office of the FBI.
5. Send one copy to the nearest office of the U.S. Attorney. If also a criminal violation of state law, consider sending the referral to the appropriate state prosecuting authority.
6. If the violation involves 31 CFR 103, send one copy to the local IRS office, Criminal Investigation Division.

PRINCIPAL CRIMINAL STATUTES

- 18 U.S.C. 2** To aid, abet, counsel, command, induce or procure the commission of federal offense
- 18 U.S.C. 201** Bribery of public officials, including elected representatives, jurors and employees of any department or agency of the federal government, and witnesses in official proceedings, e.g., anyone who gives, offers or promises anything of value to a public official or a witness with the intent to influence that person's official functions
- 18 U.S.C. 215** Kickbacks, bribes: Makes it unlawful for any officer, director, employee, agent or attorney to solicit, accept or give anything of value in connection with any transaction or business of any financial institution
- 18 U.S.C. 371** Conspiracy of two or more persons to either commit a federal offense or to defraud the United States (or any agency of the U.S.)
- 18 U.S.C. 656** Theft, embezzlement or misapplication of bank funds, willfully, by an officer, director, agent or employee of a bank, with intent to injure or defraud the bank. Can infer intent to injure from the fact of injury or from acts knowingly done in reckless disregard for the interests of the bank
- 18 U.S.C. 709** False advertising or misuse of words "National", "Federal Reserve", "Deposit Insurance", etc. to convey impression of federal agency affiliation
- 18 U.S.C. 1001** General false statements statute - knowingly and willfully falsifying or concealing a material fact or making a false statement or making or using false writing knowing it to be false
- 18 U.S.C. 1005** False entries and reports or statements, including material omissions, with intent to injure or defraud the bank, the OCC (or Fed or FDIC), bank examiners or other individuals or companies
- 18 U.S.C. 1014** False statement (oral or written) e.g., loan application, made knowingly for the purpose of influencing any bank whose deposits are federally insured, upon any application, purchase agreement, commitment, loan (or any change or extension of same) including willfully overvaluing land, property or security
- 18 U.S.C. 1029** Credit Card fraud - knowingly and with intent to defraud, produce, use or traffic in counterfeit access devices
- 18 U.S.C. 1030** Computer fraud - knowingly accessing a computer without authorization, or using it for unauthorized purposes, including obtaining information contained in records of financial institutions
- 18 U.S.C. 1341** Mail fraud - scheme or artifice to defraud that makes use of the Postal Service
- 18 U.S.C. 1343** Wire fraud - scheme or artifice to defraud using transmission by wire, radio or TV for the purpose of carrying out the scheme
- 18 U.S.C. 1344** Bank fraud - scheme or artifice to defraud a federally insured institution or take money, funds, credits, assets, securities or other property by misrepresentation
- 18 U.S.C. 1621** Perjury/false statement made under oath (if false statement is not made under oath, individual may still be prosecuted under 18 U.S.C. 1001 or 1014)
- 18 U.S.C. 1951** Racketeer Influenced and Corrupt Organizations ("RICO") statutes: Investing in any enterprise affecting interstate commerce if the funds for the investment are derived from a pattern of racketeering activity (these activities are defined to include: murder, drug dealing, bribery, robbery, extortion, counterfeiting, mail fraud, wire fraud, embezzlement from pension funds, obstruction of criminal investigations, fraud in the sale of securities, etc.)
- 18 U.S.C. 1961**
- 31 U.S.C. 5311** Currency Transactions/Bank Secrecy Act
- 31 C.F.R. 103**
- 15 U.S.C. 78dd** Foreign Corrupt Practices Act of 1977: Payment of anything of value to any foreign official, foreign political party or candidate or any other person where the American corporation knows or has reason to know the thing of value would be offered to a foreign official, foreign political party or candidate for foreign political office
- 15 U.S.C. 78ff** Criminal violations of securities laws
- 15 U.S.C. 78x** Criminal penalty provisions of securities laws

OMB No. 3064-0077
Expiration Date: 7/31/88REPORT OF APPARENT CRIME
(LONG FORM)

Federal Deposit Insurance Corporation

ATTENTION:

Use this form in all cases where suspected criminal activity involves probable loss (before reimbursement or recovery) of \$10,000 or greater and in all cases, regardless of amount, involving an executive officer, director or principal shareholder of the institution within the meaning of 12 C.F.R. §215 (with the term "member bank" deemed to mean "insured nonmember bank"). This form should be promptly filed by the bank, but no later than fourteen business days following discovery of the suspected violation.

The purpose of this form is to provide a consistent means by which financial institutions can make referrals of known or suspected criminal activity perpetrated against the institutions whether by insiders or those outside the institution. The form will provide an effective means by which appropriate law enforcement and supervisory authorities will be made aware of known or suspected criminal activity. Institutions should use care in filling out this form and should insure that it is filled out in as complete a manner as practicable under the circumstances.

1 Name and Location of Financial Institution

NAME _____

LOCATION _____
STREET CITY ST ZIP

CERTIFICATE NUMBER _____ If activity occurred at branch office(s), please identify _____

2 Asset Size of Financial Institution (millions of dollars) _____

3 Approximate date and dollar amount (prior to any allowance for restitution or recovery) of suspected violation

DATE _____ AMOUNT (thousands of dollars) _____
Month Day Year

4 Summary characterization of the suspected violation. Check appropriate box(es)

- ☐ Defalcation/Embezzlement ☐ Bribery/Gratuity ☐ Other (Describe) _____
☐ False Statement ☐ Misuse of Position or Self Dealing _____
☐ Check Kiting ☐ Mysterious Disappearance _____

Applicable Section(s) of the U.S. Code (if known). (See list on page 7) _____

5 This matter is being referred to the FBI in _____
CITY ST
and the U.S. Attorney in _____
CITY ST JUDICIAL DISTRICT (if known)

6. Person(s) Suspected of Criminal Violation. Complete subparagraphs (a) through (e) on **each** individual suspected of criminal activity (if more than one, use continuation sheet). Include primary suspects only. Individuals who may have knowledge of the suspected criminal activity, but who are not themselves suspected of being involved should be listed as witnesses under Item 10. Provide any additional details known with respect to prior referrals or affiliations.

a. NAME _____
FIRST MI LAST
ADDRESS _____
STREET CITY ST ZIP
DATE OF BIRTH _____ SOCIAL SECURITY NO _____
(if known) Month Day Year (if known)

- b. Relationship to the financial institution (check all applicable blocks)

☐ Officer ☐ Employee ☐ Broker ☐ Shareholder
☐ Director ☐ Agent ☐ Borrower ☐ Other, Specify _____

- c. Is person still affiliated with the financial institution ☐ Yes ☐ No

If no, ☐ terminated ☐ resigned DATE _____
Month Day Year

Describe Circumstances (if necessary, use continuation sheet) _____

- d. Prior or related referrals ☐ Yes ☐ No. If yes, please identify _____

- e. Is person affiliated with any other financial institution ☐ Yes ☐ No or business enterprise ☐ Yes ☐ No. If yes to either or both, please identify _____

- 7 a. Explanation/Description of Suspected Violation. Provide a **brief** narrative description of the activity giving rise to the referral explaining what is unusual or irregular about the transaction. Details will be provided later in the form. The purpose of this paragraph is to provide a **summary** description of the overall transaction.

- b. Give a chronological and complete account of the suspected violation. (Use continuation sheet, if necessary.)
- Relate key events to documents and attach copies of those documents.
 - Explain who benefited, financially or otherwise, from the transaction, how much, and how.
 - Furnish any explanation of the transaction provided by the suspect and indicate to whom and when it was given.
 - Furnish any explanation of the transaction provided by any other person.
 - Furnish any evidence of cover-up by the suspect or evidence of an attempt to deceive federal or state examiners or others.
 - Indicate where the suspected violation took place (e.g., main office, branch, other).
 - Recommend any further investigation that might assist law enforcement in fully examining the potential violation.

THIS SECTION OF THE REFERRAL IS CRITICAL. It should be as detailed as circumstances permit. The care with which this section is written may make the difference in whether or not the described conduct and its criminal nature are clearly understood. The discussion points listed in this section are not exhaustive. They should be covered but to the extent additional explanation would be useful as to any particular item or to the extent an additional category should be addressed. It should be done here. Feel free to use attachments or to continue the description on a separate sheet. Include any suggestions for the interviewing of any witnesses, gathering of any documents or methods of investigation which might prove useful in following up on the referral (e.g., tracing of proceeds).

c. Indicate whether the suspected violation appears to be an isolated incident or whether it relates to other transactions. (Explain)

8. Exclusion of Information from the Referral

Has any pertinent information been excluded from this referral as a result of any legal or other restraint? ☐ Yes ☐ No
If so, why? _____

Have the excluded information or documents been segregated for later retrieval? ☐ Yes ☐ No

9. Has there been a confession? ☐ Yes ☐ No If so, by whom? _____

10. Witnesses

List any witnesses who might have information about the suspected violation and describe their position or employment. Indicate if they have been interviewed. (Use continuation sheet if necessary.)

	Name	Position	Address	Tele	Interviewed	
					Yes	No
1.	_____	_____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>
2.	_____	_____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>
3.	_____	_____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>
4.	_____	_____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>
5.	_____	_____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>

11. Discovery and Reporting

a. Who discovered the suspected violation and when?

b. Has the suspected violation been reported to the Board of Directors? ☐ Yes ☐ No By whom and when?

c. Has the Board of Directors taken action? ☐ Yes ☐ No If so, what and when?

d. Has the suspected violation previously been reported to federal or local law enforcement or to any federal or state supervisory agency? ☐ Yes ☐ No If so, by whom, to whom, and when?

12. Loss

- a. Amount of loss known \$ _____
- b. Restitution by _____
In the amount of \$ _____
- c. Name of Applicable Surety Bond Company _____
- d. Amount of Bond \$ _____
- e. Amount of deductible \$ _____
- f. Was claim filed? ☐ Yes ☐ No
- g. Settlement by Surety Company \$ _____
- h. Total restitution and settlement to date \$ _____
- i. Net loss (after subtracting any amounts paid in the form of restitution or settlement) \$ _____
- j. Is additional loss suspected? ☐ Yes ☐ No (If yes, explain) _____

- k. Has the suspected violation had a material impact on or otherwise effected the financial soundness of the institution? If so, please explain _____

13. Offer of Assistance

The individuals listed below are/will be authorized to discuss this referral with FBI and Department of Justice officials and to assist in locating or explaining any documents pertinent to this referral. **provided that contact is first made with**

Name _____ Position _____
Phone No. _____

Name _____ Tele. No. _____
Name _____ Tele. No. _____
Name _____ Tele. No. _____

14. Form Prepared by _____
Position _____
Agency/Institution _____
Phone No. _____ Date _____

DISTRIBUTION:
If Referral is Made by Bank

1. Retain one copy in the bank's files.
2. Send one copy to Regional Director, Federal Deposit Insurance Corporation.
3. Send one copy to the nearest office of the FBI.
4. Send one copy to nearest office of the U.S. Attorney.
5. If the violation involves 31 CFR 103, send one copy to the local IRS office, Criminal Investigation Division.

DISTRIBUTION BY EXAMINER/REGIONAL OFFICE
If Referral Is Made by Examiner:

Examiner

1. Retain one copy in field office file under name of the bank.
2. Send original to the Regional Office.

Region

3. Retain one copy in Regional Office under name of the bank.
4. Send one copy to the Chief, Special Activities Section, Washington, D.C. 20429, accompanied by a signed cover letter indicating, in appropriate cases, the priority to be given the referral.
5. Send one copy to the nearest office of the FBI.
6. Send one copy to the U.S. Attorney. If also a criminal violation of state law, consider sending the referral to the appropriate state prosecuting authority.
7. If the violation involves 31 CFR 103, send one copy to the local IRS office, Criminal Investigation Division.

CONTINUATION SHEET

Item No.	Remarks

INSTRUCTIONS FOR EXAMINERS

Examiners should fill out this form whenever suspected criminal activity has been identified in a banking institution and either has not yet been reported by the institution or the referral made by the institution is deemed to be inadequate. It is important to note that this form should be filled out whenever criminal activity is suspected; examiners are not required to make any initial finding that such referrals would, if pursued, result in a criminal conviction. That judgment will be made by responsible law enforcement authorities. Any questions regarding whether or not any particular activity would constitute a crime for purposes of making a criminal referral should be resolved through communications with Regional Counsel.

The purpose of this referral is to provide appropriate law enforcement authorities with complete and accurate information relating to suspected criminal activity. All information requested within the body of the form should be supplied at the time of the referral unless such information is not known or can only be supplied at a later date by operation of The Right to Financial Privacy Act. In the latter case, documents not provided with this form should be segregated and safeguarded in order that they might be subsequently supplied in accordance with the provisions of The Right to Financial Privacy Act. In filling out this form, examiners should avoid overly technical descriptions or transactions which might not be readily understood by law enforcement authorities unfamiliar with banking operations.

PRINCIPAL CRIMINAL STATUTES

- 18 U.S.C. 2 "To aid, abet, counsel, command, induce or procure" the commission of federal offense.
- 18 U.S.C. 201 Bribery of public officials, including elected representatives, jurors and employees of any department or agency of the federal government and witnesses in official proceedings; e.g., anyone who gives, offers or promises anything of value to a public official or a witness with the intent to influence that person's official functions.
- 18 U.S.C. 215 Kickbacks, bribes. Makes it unlawful for any officer, director, employee, agent or attorney to solicit, accept or give anything of value in connection with any transaction or business of any financial institution.
- 18 U.S.C. 371 Conspiracy of two or more persons to either commit a federal offense or to defraud the United States (or any agency of the U.S.)
- 18 U.S.C. 656 Theft, embezzlement or misapplication of bank funds, willfully, by an officer, director, agent or employee of a bank, with intent to injure or defraud the bank. Can infer intent to injure from the fact of injury or from acts knowingly done in reckless disregard for the interests of the bank.
- 18 U.S.C. 709 False advertising or misuse of words "National," "Federal Reserve," "Deposit Insurance," etc., to convey impression of federal agency affiliation.
- 18 U.S.C. 1001 General false statements statute—knowingly and willfully falsifying or concealing a material fact or making a false statement or making or using false writing knowing it to be false.
- 18 U.S.C. 1005 False entries and reports or statements, including material omissions, with intent to injure or defraud the bank, the OCC (or Fed or FDIC) bank examiners or other individuals or companies.
- 18 U.S.C. 1014 False statement (oral or written) e.g., loan application, made knowingly for the purpose of influencing any bank whose deposits are federally insured, upon any application, purchase agreement, commitment, loan (or any change or extension of same) including willfully overvaluing land, property or security.
- 18 U.S.C. 1029 Credit Card fraud—knowingly and with intent to defraud, produce, use or traffic in counterfeit access devices.
- 18 U.S.C. 1030 Computer fraud—knowingly accessing a computer without authorization, or using it for unauthorized purposes, including obtaining information contained in records of financial institutions.
- 18 U.S.C. 1341 Mail fraud—scheme or artifice to defraud that makes use of the Postal Service.
- 18 U.S.C. 1343 Wire fraud—scheme or artifice to defraud using transmission by wire, radio or TV for the purpose of carrying out the scheme.
- 18 U.S.C. 1344 Bank fraud—scheme or artifice to defraud a federally insured institution or take money, funds, credits, assets, securities or other property by misrepresentation.
- 18 U.S.C. 1621 Perjury/false statement made under oath (if false statement is not made under oath, individual may still be prosecuted under 18 U.S.C. 1001 or 1014).
- 18 U.S.C. 1951 Racketeer Influenced and Corrupt Organizations ("RICO") statutes: Investing in any enterprise affecting interstate commerce if the funds for the investment are derived from "a pattern of racketeering activity" (these activities are defined to include: murder, drug dealing, bribery, robbery, extortion, counterfeiting, mail fraud, wire fraud, embezzlement from pension funds, obstruction of criminal investigations, fraud in the sale of securities, etc.).
- 31 U.S.C. 5311 Currency Transactions/Bank Secrecy Act
- 31 C.F.R. 103
- 15 U.S.C. 78dd Foreign Corrupt Practices Act of 1977: Payment of anything of value to any foreign official, foreign political party or candidate or any other person where the American corporation knows or has reason to know the thing of value would be offered to a foreign official, foreign political party or candidate for foreign political office.
- 15 U.S.C. 78ff Criminal violations of securities laws
- 15 U.S.C. 78x Criminal penalty provisions of securities laws

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-ANE-22]

Airworthiness Directives; Pratt & Whitney Aircraft JT9D-3A Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require initial and repetitive radioisotope inspections of the second stage turbine nozzle guide vanes for early detection of second stage turbine vane inner shroud rearward deflection, and removal of the affected engines from service if excessive deflection is discovered. The proposed AD is needed to institute an inspection program that would maintain a safe clearance between the vane inner shroud and the second stage turbine disk, and eliminate uncontained engine failures that can be initiated by excessive vane deflection.

DATE: Comments must be received on or before January 6, 1986.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: Federal Aviation Administration, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 85-ANE-22, 12 New England Executive Park, Burlington, Massachusetts 01803, or delivered in duplicate to Room 311 at the above address.

Comments delivered must be marked: Docket No. 85-ANE-22.

Comments may be inspected at the New England Regional Office, Office of the Regional Counsel, Room 311, between the hours of 8:00 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

The applicable Alert Service Bulletin (ASB) may be obtained from Pratt & Whitney Aircraft, Publication Department, P.O. Box 611, Middletown, Connecticut 06457. A copy of the ASB is contained in the Rules Docket No. 85-ANE-22 in the Office of the Regional Counsel, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT:

Chris Gavriel, Engine Certification Branch, ANE-141, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England

Executive Park, Burlington, Massachusetts 01803, telephone (617) 273-7084.

SUPPLEMENTARY INFORMATION:

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Director before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket, at the address given above, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice, must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 85-ANE-22". The postcard will be date/time stamped and returned to the commenter.

The FAA has determined that the second stage turbine nozzle guide vanes, Part Number 770372 on PWA JT9D-3A series turbofan engines, deflect rearwards in service. This deflection can initiate an uncontained engine failure when the vane inner shroud comes in contact with the second stage turbine disk. There has been six events of excessive vane rearward deflection to date, one of which has resulted in an uncontained engine failure. In this instance, a section of the second stage turbine disk was liberated and an adjacent engine was damaged while the aircraft was in a takeoff roll. Since this condition is likely to exist or develop on other engines of the same type design, the proposed AD would require initial and repetitive radioisotope inspection of the second stage turbine nozzle guide vanes per PWA ASB 5619 dated July 31, 1985.

Conclusion

The FAA has determined that this proposed regulation involves 167 JT9D engines installed on Boeing 747 series aircraft and the approximate total

annual cost is \$112,000. It is also determined that few, if any, small entities within the meaning of the Regulatory Flexibility Act will be affected since the rule affects only operators using Boeing 747 aircraft in which the JT9D engines are installed, none of which are believed to be small entities. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT".

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, Incorporation by reference.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.05.

2. By adding the following new AD:

Pratt & Whitney Aircraft: Applies to Pratt & Whitney Aircraft (PWA) JT9D-3A series turbofan engines.

Compliance is required as indicated, unless already accomplished.

To preclude second stage turbine disk failures resulting from rearward deflection of the second stage turbine nozzle guide vane inner support, accomplish the following in accordance with the Accomplishment Instructions of PWA Alert Service Bulletin (ASB) 5619 dated July 31, 1985, or FAA approved equivalent:

(a) Inspect second stage turbine nozzle guide vanes for rearward deflection within 4,000 hours total part time since new or 4,000 hours since the vanes were refurbished.

(b) Reinspect second stage turbine nozzle guide vanes with deflection of .030 inches or less at intervals not to exceed 2,000 hours.

(c) Reinspect second stage turbine nozzle guide vanes with deflection in excess of .030 inches but not exceeding .070 inches at intervals not to exceed 1,000 hours.

(d) Remove from service, prior to further flight, second stage turbine nozzle guide

vanes that have rearward deflection exceeding .070 inches.

Note.—New vanes are defined as vanes with zero total part time. Refurbished vanes are defined as vanes which have been service operated and have subsequently been inspected and repair to the specifications in Pratt & Whitney Engine manual, Part Number 046028.

Upon request, an equivalent means of compliance may be approved by the Manager, Engine Certification Office, Aircraft Certification Division, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

Upon submission of substantiating data by an owner or operator through the FAA maintenance inspector, the Manager, Engine Certification Office, New England Region, may adjust the compliance time specified in this AD.

The FAA will request the permission of the Federal Register to incorporate by reference the manufacturer's ASB identified and described in this document.

Issued in Burlington, Massachusetts, on October 11, 1985.

Robert E. Whittington,

Director New England Region

[FR Doc. 85-25309 Filed 10-23-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 84-ANE-14]

Airworthiness Directives; Rolls-Royce Limited RB211-22B and -524 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to amend an existing airworthiness directive (AD) applicable to Rolls-Royce RB211-22B and RB211-524 series turbofan engines. The proposed amendment is needed because the FAA has determined that the original compliance date is unnecessarily restrictive. Reevaluation of the initial risk analysis by Rolls-Royce and the Civil Aviation Authority (CAA) of the United Kingdom, based on more current service experience, shows that the compliance date can be extended while maintaining a lower risk of catastrophic failure than was originally required.

DATES: Comments must be received on or before January 6, 1986.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: Federal Aviation Administration, New England Region, Office of the Regional Counsel,

Attention: Rules Docket No. 84-ANE-14, 12 New England Executive Park, Burlington, Massachusetts 01803, or delivered in duplicate to Room No. 311 at the above address.

Comments delivered must be marked: Docket No. 84-ANE-14.

Comments may be inspected at the New England Regional Office, Office of the Regional Counsel, Room No. 311, between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chris Gavriel, Engine Certification Branch, ANE-141, Engine Certification Office, Aircraft Certification Division, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273-7084.

SUPPLEMENTARY INFORMATION:

Interested persons are invited to participate in making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Director before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available for examination in the Rules Docket, both before and after the closing date for comments, at the address given above. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 84-ANE-14". The postcard will be date/time stamped and returned to the commenter.

This notice proposes to amend Amendment 39-5063 (50 FR 23109), AD 85-10-05, which currently requires low pressure rotor location bearing area modification of Rolls-Royce RB211-22B and -524 series engines prior to April 1, 1986. After issuing Amendment 39-5063, the FAA determined, based on current service experience and reevaluation of the CAA and Rolls-Royce risk analysis,

that the compliance date can be extended from April 1, 1986, to December 31, 1987, without increasing the risk of a catastrophic failure. This notice also proposes to adopt two paragraphs at the end of the AD which would provide for a means for adjusting the compliance schedule and ferrying aircraft to a repair station.

Conclusion

The FAA has determined that, since this proposed amendment extends the compliance date, there would be no additional costs relative to the cost of Amendment 39-5063. This proposed amendment affects 277 RB211-22B and -524 series turbofan engines on Lockheed L-1011 and Boeing 747 aircraft, the operators of which are not believed to be small entities. Therefore, I certify that this proposed action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) if promulgated will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Engines, Air Transportation, Aircraft, Aviation Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354 (a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85.

2. By amending Amendment 39-5063, AD 85-10-05, as follows:

(a) Revise the compliance statement to read "Prior to December 31, 1987".

(b) By adding the following paragraphs at the end thereof:

"Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, Engine Certification Office, New England Region, may adjust the compliance time specified in this AD."

Issued in Burlington, Massachusetts, on October 11, 1985.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 85-25308 Filed 10-23-85; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 424

Retail Food Store Advertising and Marketing Practices; Proposed Amendment of Trade Regulation Rule

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed Rulemaking would amend the requirements of 16 CFR Part 424 (the Retail Food Store Advertising and Marketing Practices Trade Regulation Rule, referred to in this notice as the "Unavailability Rule" or simply the "Rule"). The amendment is intended to aid consumers and retail food stores by reducing the regulatory costs and inefficiency imposed by the Rule, thereby lowering grocery prices to consumers, and by encouraging the dissemination of more useful information on a greater variety of products.

This notice sets out the rulemaking procedures to be followed, the text of the proposed Rule, reference to the legal authority under which the amendment is proposed, a statement of the Commission's reasons for proposing this amendment, a list of specific questions and issues upon which the Commission particularly desires written and oral comment, an invitation for written comments, and instructions for prospective witnesses and other interested persons who desire to present oral statements or otherwise participate in this proceeding.

DATES: Written comments must be submitted on or before January 24, 1986.

Notification of interest in questioning witnesses must be submitted on or before January 2, 1986.

Prepared statements of witnesses and exhibits, if any, must be submitted on or before February 14, 1986. Public hearings commence at 9:30 a.m. on March 17, 1986.

ADDRESSES: Written comments, notifications of interest, prepared statements of witnesses and exhibits should be submitted in five copies to Henry Cabell, Presiding Officer, Federal Trade Commission, Washington, D.C. 20580, 202-523-3564. The public hearings will be held in Room 332, Federal Trade Commission Building, 6th Street and Pennsylvania Avenue, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Walter Gross III, Attorney, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580, 202-523-3826

or

Michael Lynch, Economist, Bureau of Economics, Federal Trade Commission, Washington, D.C. 20580, 202-634-7692.

SUPPLEMENTARY INFORMATION: The FTC Rule on Retail Food Store Advertising and Marketing Practices (16 CFR Part 424) declares it an unfair method of competition and an unfair or deceptive act or practice for a retail food store to offer for sale at a stated price grocery products or other merchandise unless such products are in stock and conspicuously and readily available for sale to customers during the effective period of the advertisement at or below the advertised prices. Food retailers may defend against a charge of failure to have items available by maintaining records showing that the advertised items were ordered in time and delivered in adequate quantities to meet reasonably anticipated demand. The Commission is seeking comments on staff's proposal to amend the Rule by requiring retailers that advertise products that are available in limited supply or only in certain stores to disclose this fact clearly and adequately in the advertisement; and by adding a defense to a charge of rule violation for those retailers who provide a raincheck, substitute item, or other appropriate compensation.

The current Rule was promulgated on May 13, 1971, and became effective on July 12, 1971, 36 FR 8781 (1971). In 1980 the Commission released the results of a study of the Rule conducted by Market Facts, Inc., under a contract with the Bureau of Consumer Protection. This study was placed on the public record and on September 9, 1980, comments were solicited on certain questions relating to the Rule. 45 FR 59634, September 10, 1980.

Commission staff has examined several studies on the benefits of the Rule and evaluated estimates of the costs of complying with it. Staff's conclusions are set forth in a report that was placed on the public record ("Staff Report on the Retail Food Store Advertising and Marketing Practices Trade Regulation Rule, 16 CFR 424," July 25, 1984). The studies indicated that unavailability levels generally have been relatively low and food shoppers do not perceive unavailability as a serious problem. Food shoppers appear to be unwilling to sacrifice any price or service benefits for increased levels of

availability, even if such rates were much higher than any levels that have ever been observed in the market. Studies completed before the original rulemaking do not provide persuasive evidence that unavailability or overpricing of advertised items were prevalent or perceived as a serious problem by consumers at that time.

Staff has also studied the compliance cost figures supplied by the grocery industry and has made an independent estimate of one component of these costs.

Based on the impact evaluation study, the subsequent comments, and information available from other sources, staff of the Bureau of Consumer Protection and Economics recommended that the Commission publish an Advance Notice of Proposed Rulemaking seeking public comment on whether the Rule should remain in effect without change, or should be amended or rescinded. On December 10, 1984, the Commission published an Advance Notice, of Proposed Rulemaking seeking comment on whether the Rule should be repealed, amended, or maintained without change. 49 FR 48059 (1984).

On the basis of all of the information available to staff, it appears the costs of complying with the Rule outweigh its benefits. Since the Rule imposes costs in excess of its benefits on both consumers and grocery retailers, the Commission is proposing amendments designed to reduce unnecessary costs. The amendments would provide a defense under the Rule for stores that offer consumers a raincheck, substitute item of at least comparable value, or other compensation at least equal to the advertised value; and would require clear and adequate disclosure of limitations on availability when such limitations exist.

Section A. Statement of the Commission's Reasons for the Proposed Rule

This proceeding is an outgrowth of an impact evaluation study of the Retail Food Advertising and Marketing Practices Rule, conducted by Market Facts, an independent market research organization, at the request of the Federal Trade Commission, and completed in 1979. Among the findings of that study were: (a) A large majority of consumers have access to a number of different grocery stores;¹ and (b) even

¹ See, *A Study of Consumer Response to the Availability of Advertised Specials* (1979) at 42.

though "consumers rated unavailability as being moderately important, they would not be willing to sacrifice any price or service benefits for increased levels of availability" even if unavailability rates were several times higher than they apparently were before the Rule's promulgation.² This and other evidence indicates that the cost of the Rule to consumers significantly exceeds its benefits.

There are two potential benefits from the Rule's provisions dealing with unavailability of advertised items. First, by reducing the number of advertised items that are unavailable, the Rule could produce benefits by saving shoppers an extra trip back to the same store or to another store to purchase the advertised item (the "trip gain"). Second, if the items are advertised at a special price,³ the Rule would enable more people to purchase the item at the reduced, rather than the everyday, price (the "savings gain"). Two studies quantify these benefits. The first, the Market Facts study (supra, note 1), examined what shoppers would be willing to pay in terms of increased prices or decreased services to increase availability rates in grocery stores. Consumers were thus asked to provide their own evaluations of the tangible gain, plus any other benefits consumers perceived from increasing availability rates. The survey concluded that consumers would be unwilling to pay anything to increase availability rates, even if those rates were much higher than they apparently were prior to the Rule. Another study⁴ used a simulation model of shopping to estimate the "savings gain" and "trip gain" directly. Staff has used the results of this study to estimate the potential benefits to consumers from the Rule.

Several types of cost are engendered by the Rule. First, the Rule may impose higher legal and administrative costs to maintain a "paper trail" of records to prove, when the inevitable occurs and a store runs out of an item, that the stock-out was despite the fact that the store stocked enough to meet reasonably anticipated demand. These costs would result if store personnel who check on availability and pricing of items must spend time filling out forms solely for purposes of constructing this "paper trail," and must also spend more time conducting the checks than they would

in the Rule's absence. Second, to minimize the chances of running afoul of the Rule's unavailability provisions, stores may carry uneconomically large inventories. Third, if the Rule provides a "savings gain" to consumers, it imposes this cost upon grocers.

Staff also identified a number of indirect costs that may result from the Rule. In particular, the Rule may discourage the advertising of items with unpredictable demand (such as new items) or high costs of carrying inventory (such as perishables), or items that are only of interest in particular neighborhoods. The Rule virtually precludes the advertising of goods that cannot be obtained in unlimited quantities, such as close-out specials or products available to the grocer in limited supply.

Staff has carefully evaluated the Rule's costs and benefits to consumers. They have concluded that under all reasonable assumptions, the costs imposed on consumers by the Rule substantially outweigh any benefits provided.

Given that the Rule costs consumers more than it saves them, staff believes it should be modified in some way. The staff has considered the various alternatives, and has recommended that the Rule should be amended, rather than repealed. By amending the Rule, the staff believes much of the cost could be eliminated, without appreciably reducing the benefits of the present Rule.

Staff concludes the particular amendments proposed will relieve consumers of the Rule's costs in several ways. First, the amended Rule would allow a defense for stores that offer rainchecks or provide comparable-value items to consumers if they run out of advertised items. This approach should enable any store that already has or would choose to implement a raincheck and/or comparable-value policy to eliminate the cost of developing a paper trail and reduce any excess inventories.⁵ Second, the proposed amended Rule would require that when stores advertise products with limited availability, they disclose such limitations clearly and adequately. By tracking the relevant language of the Commission's Guides Against Bait Advertising,⁶ the proposed Rule emphasizes that food store advertisers cannot engage in the practice of bait and switch advertising, and ensures that consumers are not deceived into

believing that supplies are available in unlimited supply and/or in all stores, when such is not the case. Unlike the present Rule, this approach would permit advertising of close-out specials and other products in limited supply, as well as goods that are only of interest in certain stores.

The proposed amended Rule does not include a separate overpricing provision. This requirement is implicit in the requirement that products advertised for sale at a stated price be available. Moreover, the staff believes that net overpricing rates (that is, overpricing errors minus underpricing errors) have apparently always been quite small, even prior to the Rule. Furthermore, it appears that the proliferation of scanners has dramatically decreased rates of mispricing.

The Commission has carefully and deliberately considered this staff report and recommended trade regulation rule and the comments received in response to the Advance Notice of Proposed Rulemaking. Based on the evidence presented to date, the Commission believes that the initiation of a rulemaking proceeding would be in the public interest.

The public is advised that the Commission has not adopted any findings or conclusions of the staff. All findings in this proceeding shall be based solely on the rulemaking record. Accordingly, the Commission invites comment on the advisability and manner of implementation of the proposed amended Rule.

The Commission's Rules of Practice shall govern the conduct of the rulemaking proceeding, except that, to the extent that this notice differs from the Rules of Practice, the provisions of this notice shall govern. This alternative form of proceeding is adopted in accordance with § 1.20 of those rules (16 CFR 1.20).

Section B. Section-by-Section Analysis

The proposed Rule, although incorporating the major substantive provisions of the current Rule, substantially changes the form of that Rule, rather than simply amending certain sections. The purpose of this approach is both greater clarity and closer conformity to current rulemaking practices.

The following discussion is intended to highlight the major provisions of the proposed amendments, and to explain briefly their anticipated effect. Further explication of the effect of the proposed Rule *in toto* is contained in Section A of this notice, "Statement of the

² *Ibid.*, at 25.

³ The Rule covers all items advertised by retail food stores, whether advertised at a special price or not.

⁴ Ferguson, Mason, and Wilkinson, "Estimating Consumer Losses from Unavailable Advertised Survey Specials," 13 *Journal of Consumer Affairs*, Winter 1979.

⁵ Evidence submitted in the comment period indicated that a substantial number of stores already have such a policy.

⁶ 16 CFR 238.3(c).

Commission's Reasons for the Proposed Rule."

Initially, the analysis is carried out by explaining the disposition in the staff proposal of each section of the current Rule. Next, this analysis focuses on the individual sections of the proposed Rule.

(1) Section-by-Section Analysis of the Current Rule.

Section 424.1(a) has been deleted as being inconsistent with the format of most of the Commission's trade regulation rules, and superfluous to the statement of the Rule *per se*, which need only contain a specific description of actions proscribed or prescribed by the Rule.

The preamble of § 424.1(b) has been combined with § 424.1(b)(1)(i) to form § 424.1 of the proposed amended Rule. Because this rulemaking is based on the Commission's authority under section 10(a)(1)(B), the term "an unfair method of competition and" has been deleted. The parenthetical sentence of § 424.1(b)(1)(i), "if not readily available, clear and adequate notice shall be provided that the items are in stock and may be obtained upon request", has been deleted as superfluous, since the simple requirement that advertised items be "readily available to customers" implicitly includes a requirement that items be stocked in such a way that a reasonable consumer would not be precluded from obtaining them.

Section 424.1(b)(1)(ii) has been incorporated into § 424.2 of the proposed amended Rule as a defense. The requirement that the retailer document that sufficient quantities were actually delivered to the stores in order to invoke this defense has been deleted. The defense can be invoked under the proposed amended Rule by documenting that quantities sufficient to meet reasonably anticipated demands were ordered in adequate time for delivery.

The first sentence in § 424.1(b)(2) has been deleted as superfluous. The requirement of the proposed amended Rule that products advertised for sale at a stated price be available implies that the items should be available at the advertised price. The last sentence in § 424.1(b)(2) is deleted and in its place the proposed amended Rule specifies in § 424.1 that an advertisement is not unfair or deceptive if it "clearly and adequately" discloses that supplies of some advertised products are limited and/or the advertised products are available only at some outlets, when such is the case. This requirement was adopted from the relevant portion of the Commission's Guides Against Bait Advertising, 16 CFR 238.3(c). This disclosure will protect consumers from

any deception that would cause them to believe that advertised products were available with certainty at all outlets, when such is not the case. It will also allow retailers to provide information to consumers on items whose advertising is severely restricted under the current Rule. Under the proposed Rule, grocers would be able to advertise items even though they are not available at all outlets or there is some possibility that the demand may exceed available supplies, so long as they clearly and adequately advise consumers that some products are in limited supply and/or available only at some outlets.

The notes to the current Rule have been deleted, since the subjects they treat, rainchecks and disclosures of limited availability, would be incorporated into the proposed amended Rule itself.

Section 424.2 of the current Rule—which states that although the rulemaking record does not support extension of the Rule to retailers other than grocers, the Commission will consider matters involving unavailability and mispricing of commodities other than groceries in the spirit of the Rule—has been deleted, since general policy statements such as this do not have the legal effect of trade regulation rules.

2. Section-by-Section Analysis of the Proposed Rule.

Section 424.1, "Unfair or Deceptive Practices," states, as does § 424.1(b)(1)(i) of the current Rule, that it is an unfair or deceptive practice to fail to have an advertised item in stock. The proposed amended Rule specifies that such practices are not unfair or deceptive if the advertisement clearly and adequately discloses limitations on availability.

Section 424.2, "Defenses," corresponds to § 424.1(b)(1)(ii) of the current Rule, and establishes defenses to charges of Rule violation. The first defense is that the advertised products were ordered in adequate time for delivery in quantities sufficient to meet reasonably anticipated demands, indicating that the failure to have available enough of the product to satisfy the actual demand was due to circumstances beyond the advertiser's control. The other defenses are that the retailer offer compensation—in the form of a raincheck, a substitute item of comparable value, or other compensation at least equal to the advertised value—to consumers who are unable to purchase an item at the advertised price.

Section C. Invitation To Comment

All interested persons are hereby notified that they may submit data, views, or arguments on any issue of fact, law or policy which may have bearing upon the proposed Rule. Such comments may be either written or oral. Written comments will be accepted until January 24, 1986, and should be addressed to Henry B. Cabell, Presiding Officer, Federal Trade Commission, Washington, D.C. 20580, 202-523-3564. To assume prompt consideration, comments should be identified as "Retail Food Store Advertising and Marketing Practices Rulemaking Comment." Please furnish five copies of all comments. (Instructions for persons wishing to present their views orally are found in Sections E, F and G of this notice.)

While the Commission welcomes comments on any issues which you feel may have bearing upon the proposed Rule, questions on which the Commission particularly desires comment are listed in Section D below. All comments and testimony should be referenced specifically to either the Commission's questions or the section of the proposed Rule being discussed. Comments should include reasons and data for the position. Comments opposing the proposed Rule or specific provisions should, if possible, suggest a specific alternative. Proposals for alternative regulations should include reasons and data that indicate why the alternatives would better serve the purposes of the proposed Rule. Comments should include a full discussion of all the relevant facts and be based directly on firsthand knowledge, personal experience or general understanding of the particular issues addressed by the proposed Rule.

Section D. Questions and Issues

The Commission has decided to employ a modified version of the rulemaking procedures specified in § 1.13 of the Commission's Rules of Practice, proceeding with a single Notice of Proposed Rulemaking and the "no designated issues" format.

Set forth below is a list of specific questions and issues upon which the Commission particularly desires comment and testimony. The list of questions is not intended to be a list of "disputed issues of material fact that are necessary to resolve," and any right to cross examined will be determined with reference to the criteria set forth in the Commission's Rules of Practice.

Interested persons are urged to consider carefully the following

questions. The Commission retains its authority to promulgate a final rule which differs from the proposed rule in ways suggested by these questions and based upon the rulemaking record:

1. What would be the costs to food store retailers of implementing a raincheck and/or substitute item policy to meet any excess demand for an unavailable advertised item?
2. What fraction of consumers are currently served by stores that offer rainchecks and/or substitute items when they run out of advertised items? What fraction are currently served by stores that offer neither? How would the number of stores that have such policies change if the proposed amended Rule is promulgated?
3. What would be the costs and benefits to consumers and grocers of requiring as a defense to a charge of rule violation that grocers offer an item comparable to the advertised item "at the advertised price," relative to the costs and benefits of a requirement that grocers offer an item comparable to the advertised item "at a comparable price reduction"?
4. Will a raincheck or substitute item policy offer adequate protection to consumers against deceptive retail food store advertising? To what extent would such policies reduce consumer injury?
5. What other possible arrangements exist, if any, besides providing a raincheck or comparable substitute item, to provide the requesting consumer with compensation at least equal to the advertised value for out-of-stock item? What fraction of stores currently have such arrangement, and what fraction of consumers are served by them? How would the number of stores that have such arrangements change if the proposed Rule is promulgated? Under what circumstances are such arrangements more efficient than giving a raincheck or substitute item?
6. Are disclosures required to prevent consumer deception regarding the likely availability of advertised item?
7. If disclosures are required, what level of specificity is appropriate with respect to item (e.g., "not all items" vs. "12 ounce size of Brand X") location (e.g., "store Y" vs. "some stores"), and limitation (e.g., "limited quantity" vs. "only 20").
8. To what extent would disclosures of various levels of specificity reduce consumer injury caused by advertised items that are not available?
9. What costs would disclosure requirements impose on retailers, and how would these costs vary with different levels of specificity? How would disclosure requirements affect the volume and type of grocery store advertising?
10. (a) What evidence exists, if any, that overpricing of advertised items is prevalent in the retail food store industry?
(b) To what extent has the introduction of large-scale automated check-out systems (scanners) reduced item pricing errors for advertised items? Non-advertised items? Are there data on any mispricing errors introduced by scanner use?
11. Is there a continued need for the Rule or will competitive market forces assure an appropriate balance between availability and

costs? What evidence exists, if any, that bait advertising would be prevalent in the retail food store industry absent a Rule? What additional benefits, if any, might stem from repeal of the Rule in its entirety? What additional costs might be imposed on consumers?

Section E. Public Hearings

Public Hearings on this proposed trade regulation rule will commence on March 17, 1986, at 9:30 a.m., in Room 332, Federal Trade Commission Building, 6th Street and Pennsylvania Avenue, NW., Washington, D.C. 20580. Tentatively scheduled are 10 days of public hearings.

Persons desiring to present their views orally at the hearings should advise Henry B. Cabell, Presiding Officer, Federal Trade Commission, Washington, D.C. 20580, 202-523-3564, as soon as possible.

The Presiding Officer appointed for this proceeding shall have all powers prescribed in 16 CFR 1.13(c), subject to any limitations described in this notice.

Section F. Instruction to Witnesses

1. Advance notice.

If you wish to testify at the hearings, you must notify the Presiding Officer of your desire to appear and file with him your complete, word-for-word statement no later than February 14, 1986. This advance notice is required so that other interested persons can determine the need to ask you questions and have an opportunity to prepare. Any cross-examination that is permitted may cover any of your written testimony, which will be entered into the record exactly as submitted. Consequently, it will not be necessary for you to repeat this statement at the hearing. You may simply appear to answer questions with regard to your written statement or you may deliver a short summary of the most important aspects of the statement within time limits to be set by the Presiding Officer. As a general rule, your oral summary should not exceed twenty minutes.

Prospective witnesses are advised that they may be subject to questioning by designated representatives of interested parties and by members of the Commission's staff. Such questioning will be conducted subject to the discretion and control of the Presiding Officer and within such time limitations as he may impose. In the alternative, the Presiding Officer may conduct such examination himself or he may determine that full and true disclosure as to any issue or question may be achieved through rebuttal submissions or the presentation of additional oral or written statements. In all such instances, the Presiding Officer

shall be governed by the need for a full and true disclosure of the facts and shall permit or conduct such examination with due regard for relevance to the factual issues raised by the proposed rule and the testimony delivered by each witness.

2. Use of Exhibits.

Use of exhibits during oral testimony is encouraged, especially when they are to be used to help clarify technical or complex matters. If you plan to offer documents as exhibits, file them as soon as possible during the period for submission of written comments so they can be studied by other interested persons. If those documents are unavailable to you during this period you must file them as soon as possible thereafter and not later than the deadline for filing your prepared statement. Mark each of the documents with your name, and number them in sequence (e.g., Jones Exhibit 1). Please also number all pages of each exhibit. The Presiding Officer has the power to refuse to accept for the public record any hearing exhibits that you have not furnished by the deadline.

3. Expert Witnesses.

If you are going to testify as an expert witness, you must attach to your statement a *curriculum vitae*, biographical sketch, resume or summary of your professional background and a bibliography of your publications. It would be helpful if you would also include documentation for the opinions and conclusions you express by footnotes to your statements or in separate exhibits. If your testimony is based upon or chiefly concerned with one or two major research studies, copies should be furnished. The remaining citations to other works can be accomplished by using footnotes in your statement referring to those works.

4. Results of surveys and other research studies.

If in your testimony you will present the results of a survey or other research study, as distinguished from simple references to previously published studies conducted by others, you must also present as an exhibit or exhibits the following:

- (a) A complete report of the survey or other research study and the information and documents listed in (2) through (5) below if they are not included in that report.
- (b) A description of the sampling procedures and selection process, including the number of persons contacted, the number of interviews completed, and the number of persons who refused to participate in the survey.
- (c) Copies of all completed questionnaires or interview reports used in conducting the survey or study if respondents were:

permitted to answer questions in their own words rather than required to select an answer from one or more answers printed on the questionnaire or suggested by the interviewer.

(d) A description of the methodology used in conducting the survey or other research study including the selection of and instructions to interviewers, introductory remarks by interviewers to respondents, and a sample questionnaire or other data collection instrument.

(e) A description of the statistical procedures used to analyze the data and all data tables that underlie the results reported.

Other interested persons may wish to examine the questionnaires, data collection forms and any other underlying data not offered as exhibits and which serve as a basis for your testimony. This information, along with computer tapes that were used to conduct analyses, should be made available (with appropriate explanatory data) upon request of the Presiding Officer. The Presiding Officer will then be in a position to permit their use by other interested persons or their counsel.

5. Identification, number of copies, and inspection.

To assure prompt consideration, all materials filed by prospective witnesses pursuant to the instructions contained in paragraphs 1-4 above should be identified as "Retail Food Store Advertising and Marketing Practices" ("and Exhibits," if appropriate), and submitted in five copies when feasible and not burdensome.

6. Reasons for requirement.

The foregoing requirements are necessary to permit us to schedule the time for your appearances and that of other witnesses in an orderly manner. Other interested parties must have your expected testimony and supporting documents available for study before the hearing so they can decide whether to question you or file rebuttals. If you do not comply with all of the requirements, the Presiding Officer has the power to refuse to let you testify.

7. General procedures.

These hearings will be informal and courtroom rules of evidence will not apply. You will not be placed under oath unless the Presiding Officer so requires. You also are not required to respond to any questions outside the area of your written statement. However, if such questions are permitted, you may respond if you feel you are prepared and have something to contribute. The Presiding Officer will assure that all questioning is conducted in a fair and reasonable manner and will allocate time according to the number of parties participating, the legitimate needs of each group for full and true disclosure,

and the number and nature of the factual issues discussed. The Presiding Officer further has the right to limit the number of witnesses to be heard if the orderly conduct of the hearing so requires.

The deadlines established by this notice will not be extended and hearing dates will not be postponed unless hardship can be demonstrated.

Section G. Notification of Interest

If you wish to avail yourself of the opportunity to question witnesses you must notify the Presiding Officer by January 2, 1986, of your position with respect to the proposed rulemaking proceeding. Your notification must be in sufficient detail to enable the Presiding Officer to identify groups with the same or similar interests respecting the general questions and issues provided in Section D of this notice. The Presiding Officer may require the submission of additional information if your notification is inadequate. If you fail to file an adequate notification in sufficient detail, you may be denied the opportunity to cross-examine witnesses.

Before the hearings commence, the Presiding Officer will identify groups with the same or similar interests in the proceeding. These groups will be required to select a single representative for the purpose of conducting direct or cross-examination. If they are unable to agree, the Presiding Officer may select a representative for each group. The Presiding Officer will notify all interested persons of the identity of the group representatives at the earliest practicable time.

Group representatives will be given an opportunity to question each witness on any issue relevant to the proceeding and within the scope of the testimony. The Presiding Officer may disallow any questioning that is not appropriate for full and true disclosure as to relevant issues. The Presiding Officer may impose fair and reasonable time limitations on the questioning. Given that questioning by group representatives and the staff will satisfy the statutory requirements with respect to disputed issues, no such issues will be designated by the Presiding Officer.

Section H. Post-Hearing Procedures

The Presiding Officer will establish the time that you will be afforded after the close of the hearings to file rebuttal submissions, which must be based only upon identified, properly cited matters already in the record. The Presiding Officer will reject all submissions which are essentially additional written comments rather than rebuttal. The rebuttal period will include the time

consumed in securing a complete transcript.

Within a reasonable time after the close of the rebuttal period, the staff shall release its recommendations to the Commission as required by the Commission's Rules of Practice. The Presiding Officer's report shall be released not later than 30 days thereafter and shall include a recommended decision based upon his or her findings and conclusions as to all relevant and material evidence. Post-record comments, as described in § 1.13(h) of the Rules of Practice, shall be submitted not later than 60 days after the submission of the Presiding Officer's Report.

Section I. Rulemaking Record

In view of the substantial rulemaking records that have been established in prior trade regulation rulemaking proceedings (and the consequent difficulty in reviewing such records), the Commission urges all interested persons to consider the relevance of any material before submitting it for the rulemaking record. While the Commission encourages comments on its proposed rule, the submission of material that is not generally probative of the issues posed by the proposed rule merely overburdens the rulemaking record and decreases its usefulness, both to those reviewing the record and to interested persons using it during the course of the proceeding. The Commission's rulemaking staff has received similar instruction.

Material that the staff has obtained during the course of its investigation prior to the initiation of the rulemaking proceeding but that is not placed in the rulemaking record will be made available to the public to the extent that it is considered to be nonexempt from disclosure under the Freedom of Information Act, 5 U.S.C. 552.

The rulemaking record, as defined in 16 CFR 1.18(a), will be made available for examination in Room 130, Public Reference Room, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, D.C.

Section J. Preliminary Regulatory Analysis

I. Need for, and Objectives of, the Proposed Rule

The Federal Trade Commission (FTC) is presently considering changes to its Trade Regulation Rule Concerning Retail Food Store Advertising and Marketing Practices. The present Rule requires that when retail grocery stores

advertise goods at a stated price, they must have sufficient stock on-hand to satisfy all demand for the good during the effective period of the advertisement, and that all such goods must be available at or below the advertised price. The Rule provides a defense if retailers can prove that goods were ordered and delivered in quantities sufficient to meet reasonably anticipated demand. The Commission has authorized publication of a Notice of Proposed Rulemaking, which appears in the *Federal Register* concurrently with this preliminary regulatory analysis.

The FTC proposes to amend the provisions of 16 CFR Part 424, the Retail Food Store Advertising and Marketing Practices Trade Regulation Rule [referred to below as the "Unavailability Rule" or the "Rule"]. The proposed amendments would make three basic changes in the Rule. First, a food store could raise an absolute defense to a charge of unavailability by showing it makes available to the consumer upon request either a raincheck; a substitute item of comparable value; or some other appropriate compensation. Second, a store would be required to disclose clearly and adequately in its advertising any limitations on the availability of advertised items. Third, the proposed amended Rule would no longer include a separate sub-provision regulating mispricing.

Retail food stores, like other retail stores, would continue to fall under the Commission's authority to prohibit unfair or deceptive practices under section 5 of the FTC Act, and accordingly would continue to be prohibited from deceptively overpricing items and from advertising items that are unavailable or that are not intended to be sold, as in "bait and switch" schemes. Detailed information regarding the investigation, findings, and reasoning which support the proposed amendment is contained in sections of the Notice of Proposed Rulemaking that precede this document and that is incorporated by reference into this analysis, and in the FTC Staff Report entitled "Retail Food Store Advertising and Marketing Practices Trade Regulation Rule, 16 CFR Part 424" (July 1984).

The FTC, in reviewing the effect of the Unavailability Rule, has elicited a body of empirical evidence that suggests that the welfare of consumers is not generally enhanced by the Rule in its present form. The estimated benefits to consumers from the increased availability of advertised items generated by the Rule are small and uncertain. Under any scenario examined

by the staff, the costs of the rule—in the form of recordkeeping burdens and maintenance of excess inventories by grocers—appear to exceed these benefits and therefore lead to higher food prices. The Rule may also impede the flow of useful information to consumers, by discouraging the advertising of certain kinds of goods, such as perishables or goods only available in limited supply to the grocery store. The proposed amendments to the Rule seek to eliminate those costs to the greatest extent possible while preserving the benefits to consumers the Rule creates.

II. Legal Authority

The Commission has reason to believe the amendments would be in the public interest and proposes to amend the Rule in accordance with section 18 of the Federal Trade Commission Act, 15 U.S.C. 57(a).

III. Alternatives Considered by the Commission

The Commission can take several different forms of action. It can repeal the Rule, modify the provisions of the Rule in various ways, or leave the existing Rule unchanged.

1. *Repeal the Rule.* Under this option, the Commission would delete the Unavailability Rule from the body of trade regulation rules currently contained in the Code of Federal Regulations.

2. *Modify the Rule.* A number of options exist as to how to amend the Unavailability Rule so as to lessen its adverse impact upon grocers and consumers. Each of these will be considered in turn.

a. *Specify Tolerance Levels of Unavailability.* The Commission could amend the Rule by specifying certain percentage rates for unavailability, below which it would be presumed that the unavailability was due to circumstances beyond the food retailer's control. The Commission could set the specific percentage rate that activates the presumption in the final Rule after further analysis.

b. *Requiring Disclosures of Limitations on Availability.* This option would amend the current Rule by requiring the use in advertisements of disclosures of limitations on availability, when appropriate, such as limitations on quantities available and/or the stores at which the product will be available.

c. *Rainchecks or Comparable Items as a Defense.* The Rule could be amended to allow a retailer to use as a defense a policy of providing a raincheck or an item of comparable type and value (or any similar arrangement to give the

consumer the benefit of the advertised savings) if the advertised product is unavailable. Under the current Rule, the existence of a raincheck policy, in and of itself, is not considered to be compliance with the Rule.

3. Take No Action

Under this option, the existing Rule would remain unchanged.

IV. Cost-Benefit Analysis

The two major groups that will be affected by amendment or repeal of the Unavailability Rule are the retail food store customers who use advertisements to make decisions on where to shop or what to buy, and the retail stores themselves.

The retail food industry is a major component of the national economy. In 1984, grocery store sales totaled nearly \$264 billion. At that time, there were approximately 158,000 grocery stores in the United States. Among those were 30,000 supermarkets (stores with over \$2 million in sales). Supermarkets advertise an average of 135 different products each week. The typical item will have 25 units stocked on the shelves of each store. Thus, an average of over 100 million advertised items (subject to the Unavailability Rule) will be on supermarket shelves each week, plus millions more in smaller food stores. While the Rule covers an overwhelming number of consumer purchases, the Rule's primary beneficiaries are those customers who rely on advertisements to select the store at which they wish to shop.

A. Repeal the Current Rule.

The Commission has proposed to amend the current Rule. This analysis begins, however, by considering the effect of repealing the Rule. This will best display the costs and benefits imposed by the Rule and will serve as a useful point of comparison. The benefits of amending or repealing the Rule are the savings incurred by avoiding the costs of the Rule's continued implementation, and the cost of amending or repealing the Rule equals the lost benefits from continued implementation.

Projected Benefits

1. *Benefits to Food Retailers:* If the Rule is rescinded, retailers will be able to realize savings from elimination of certain expenses associated with compliance with the Rule. These costs fall into three categories.

(a) *Inventories.* To comply with the current Rule, food stores must maintain enough stock to meet any expected demand for the product. To the extent the Rule reduces unavailability rates,

therefore, it causes the retailer to carry larger inventories of the product and thereby raises inventory carrying costs. If the Rule does not raise unavailability rates, it does not impose any excess inventory costs.

(b) *Recordkeeping and Audit Costs.* To establish a defense against charges of unavailability, the retailer must expend extra time and paper to properly document the order, delivery, and pricing of advertised goods, as well as expected demand for them. The Rule also causes the retailer to incur increased labor costs for clerks, management personnel, and outside auditors associated with monitoring of pricing errors and proper order and delivery of advertised items.

(c) *Transfer Costs.* To the extent that grocers sell goods at a "special" price, they will be required to increase prices on other goods.

The repeal of the Rule would reduce or eliminate these three costs. However, in the Rule's absence, retailers might lack clear guidance on what standards the Commission would use in enforcing the general prohibition of deceptive advertising. In the face of this uncertainty, advertisers might continue to incur some of these costs, for example, by maintaining records that would be useful should they be subject to an enforcement action.

2. *Benefits to Consumers:* Since the increased cost of doing business under the Rule is passed on to the consumer, the cost savings to retailers from the Rule's repeal (summarized above) would benefit the consumer in the form of lower overall prices or improved services if the Rule were repealed.

Repeal of the Rule may save consumers time and money in another way. Grocery stores may offer more and a greater variety of advertised specials. The current Rule discourages the advertising of "close out items" and other items available to the retailer in limited supply, since the store must have units of the item in stock to meet all requests. Perishable goods, such as produce, are also costly to advertise under the current Rule, because the risk of spoilage makes the carrying of high inventories expensive. Repeal of the Rule could encourage more advertising of such goods. By increasing the flow of price information to consumers, this would lower the time cost of shoppers, encourage competition, and lower the prices of these goods.

Costs and Adverse Economic Effects

1. *Costs to Retailers:* No costs or adverse economic effects to retailers would be expected from repeal.

2. *Cost to Consumers:* Elimination of the Unavailability Rule would eliminate the economic benefits that consumers presently derive from the Rule. Assuming the Rule has reduced unavailability rates, it generates two types of savings for consumers.

(a) *Transfer Benefit.* The Rule increases the likelihood consumers who shop for the advertised items receive the items at the advertised price, instead of having to pay a higher price. This will lead to lower average food costs for those who desire to purchase advertised reduced-price items.

(b) *Trip Benefit.* The Rule reduces needless transportation costs by consumers who visit a store for an advertised item, only to find it sold out. Repeal of the Rule would eliminate these savings to consumers.

B. Set Maximum Tolerance Levels of Unavailability.

Projected Benefits

1. *Benefits to Retailers:* Specific tolerance levels would provide clear guidance on what level of unavailability will in practice be punishable by penalties. If tolerance levels were set higher than those currently prevailing, there might be some savings to retailers in inventory costs and transfer costs, though the recordkeeping and auditing costs would remain the same as under the current Rule.

2. *Benefits to Consumers:* As reduced costs to retailers would be passed on, costs to consumers would also decrease somewhat compared to the existing Rule, again assuming tolerance levels were set above existing levels.

Costs and Adverse Economic Effects

1. *Costs to Retailers:* No adverse effect on retailers would be anticipated.

2. *Costs to Consumers:* Assuming levels of advertised item unavailability rose under the new tolerance standard, consumer trip costs would increase somewhat under the amendment, and transfer benefits would be reduced.

C. Disclosures of Limitations on Availability.

Projected Benefits

1. *Benefits to Retailers:* This option would have two potential effects. First, it would allow retailers to advertise items such as close-outs or other items of limited availability that they would not be able to advertise under the current Rule. By encouraging the dissemination of more information than the current Rule allows, this option would benefit both retailers and consumers. Second, retailers could use disclosures of limited availability in advertisements for some items they now

advertise to obviate the need to incur costs for recordkeeping, auditing and excess inventories to assure and document compliance with the current Rule's requirements. Used in this way, this option would reduce the costs imposed by the current Rule.

2. *Benefits to Consumers:* Since retailer cost savings will be reflected in reduced consumer prices or improved services, the benefits to the consumer will be similar to—though perhaps somewhat lower than—those from repeal for the Rule. To the extent the disclaimer is not used, the consumer benefits will be correspondingly diminished. The use of disclosures to enable retailers to advertise items they cannot advertise under the current Rule will benefit consumers by disseminating information on such items and encouraging stores to run more specials on them.

Costs and Adverse Economic Effects

1. *Costs to Retailers:* Under the Rule as amended, retailers would incur the additional cost of ensuring that proper disclosures are placed in each advertisement. Retailers will only choose this option if the benefits to retailers exceed these costs.

2. *Costs to Consumers:* If disclosures were commonly used, consumers would incur much the same cost as if the Rule were repealed. If this option were not commonly used, unavailability rates might rise less than they would with repeal of the Rule. In this case, the increase in trip costs would be smaller.

D. Allow Rainchecks or Comparable Items as a Defense.

Projected Benefits

1. *Benefits to Retailers:* Allowing the retailer to comply by offering a raincheck or comparable item would afford retailers significant savings over the current Rule. Retailers that chose to offer rainchecks or comparable items generally could virtually eliminate the costs of documenting pricing, ordering, delivery, and expected demand that the present Rule imposes. These benefits would be lost if availability of the defense were conditional on detailed recordkeeping requirements. Rainchecks and substitute item policies would also reduce the excess inventory costs associated with the present Rule. It would also be possible for the store to advertise close-out items or other items in limited supply if the store stocked a comparable item or if the store implemented an alternative policy. If the choice of raincheck or comparable item were at the customer's discretion, the benefits would be smaller. The defense

would be available for a more limited set of items since it would only be useful for those items for which the retailer could offer both rainchecks and substitute items. Rainchecks would be infeasible for items such as close-out specials and products that do not have good substitutes. Any benefits from this amendment, of course, would not be realized by stores that do not make use of the defense.

2. Benefits to Consumers: To the extent that the amendment lowered costs for retailers and encouraged more advertising, consumers would benefit from lower prices on all goods and from the availability of additional advertised goods. As noted above, if the choice of raincheck or comparable item were not at the grocer's discretion, these benefits would be more limited. To the extent that many stores would give rainchecks or comparable items even in the absence of the Rule, the benefits to retailers and consumers of this alternative would be similar to the outcome in the market if the Rule were repealed.

Costs, Adverse Effects

1. Costs to Retailers: Retailers that do not already have a raincheck, comparable item, or similar policy, but that wish to use the defense, would incur administrative costs to develop and implement the policy.

2. Costs to Consumers: If unavailability rates increase, compared to the current Rule, consumers would incur greater trip costs for going to stores when the advertised goods are sold out and rainchecks are offered. If the store allowed substitution of a comparable item, the magnitude of these costs could be lower than if the store offers only rainchecks on the advertised items.

E. Take No Action.

The Commission could choose to take no action and leave the current Rule unchanged. In this case, the costs and benefits currently generated by the Rule would remain. The costs of the Rule are described in the previous section discussing the benefits of repeal. The benefits of the Rule are described in the previous section discussing the costs of repeal.

V. Summary and Explanation of why the Commission Proposes To Amend the Rule

The Commission has considered the options summarized in Part III of this analysis, and the costs and benefits of each. The Commission has concluded that a rulemaking proceeding based on the proposed amendment would best serve the public interest by facilitating

further exploration of these and any other options available to reduce the costs the present Rule imposes on consumers and the retail grocery industry.

A. Summary of Alternatives.

The current Rule creates compliance costs for food store retailers that appear to exceed any countervailing benefits, according to the FTC Staff Report. On this basis, the Commission believes it is in the public interest to consider modification or repeal of the current Rule. The effects of the various proposals for modification of the Rule depend to some extent upon the manner in which the particular amendment is implemented.

The Commission could specify maximum tolerance levels of unavailability that would constitute compliance with the Rule. There is little basis, however, for determining by regulation the appropriate level of tolerance for unavailability. Moreover, no matter what the tolerance levels, recordkeeping and auditing costs would be reduced little, if any, and many of the adverse effects of the Rule upon advertising would remain.

The Commission could amend the Rule by requiring clear and adequate disclosure of any limitations on general availability of the advertised items. The more restrictions placed on the circumstances under which such a disclosure could be used, the less frequently could grocery stores use it. This would generate correspondingly lower benefits than if the Rule were repealed, but lower costs in the form of foregone consumer gain as well.

The Rule could be amended in such a way that a policy of offering a raincheck, or a substitute item of comparable value, or similar compensation would constitute a defense to the Rule. This amendment would cut the costs of compliance with the Rule without greatly decreasing the benefits. If grocers were required to allow consumers to choose between a raincheck or comparable item, or if the Rule mandated conditions on the use of the defense, the positive effects of the amendment would not be as substantial.

Repeal of the Rule would reduce all inventory, recordkeeping, transfer and other compliance costs imposed upon food stores by the Rule. Any consumer benefits from price savings (transfer benefits) and the avoidance of wasted trips (trip benefits) might also be eliminated. Some costs might not be entirely eliminated, since advertisers might be uncertain about what standards would be applied to grocery advertising in the Rule's absence.

B. The Effects of the Proposed Amendment.

By adding both a disclosure requirement and a raincheck/substitute item defense to the Rule, the proposed amendment seeks to eliminate unnecessary costs and restrictions created by the Rule as currently written. The raincheck/comparable item defense will ensure that requesting consumers are not denied the benefit of any bargain they seek out based on advertising, while it will eliminate the need to carry excess inventories of the advertised goods. Even this defense does not, however, allow a store to advertise a limited quantity item for which there is no substitute. Addition of the disclosure requirement allows the store to advertise and sell these special products, benefitting the purchasing consumers, while adequately notifying shoppers that the possibility exists that stocks may not be adequate to meet all possible demand. The Rule will make explicit what action a store can take to provide itself with an absolute defense under the Rule. Thus, it should reduce the uncertainty that would exist if it were repealed and preserve the consumer benefits of the present Rule as well.

The proposed amendment will also eliminate certain superfluous or redundant sections of the current Rule. Sections 424.1(a) and 424.2 will be deleted, since they have no legal significance. The explicit requirement of the current Rule that items be available "at or below the advertised price" will also be deleted, since the requirement of the amended Rule that items "advertised for sale at a stated price" be "readily available," implies the requirement that they must be sold at the stated price.

The Rule as amended will give flexibility to retail food stores to advertise good bargains to consumers, and at the same time, ensure that the price-conscious shopper is not deceived by retail food advertising to his or her detriment.

Section K. Initial Regulatory Flexibility Analysis

Initial Regulatory Flexibility Analysis

1. Introduction

The following discussion is included in the Commission's Preliminary Regulatory Analysis for the proposed rule pursuant to the requirements of the Regulatory Flexibility Act, Pub. L. 96-354, 94 Stat. 1166 (5 U.S.C. 601 *et seq.*). The Act requires an analysis of the anticipated impact of the proposed rule

on small business.⁷ The analysis must contain a description of: (1) The reasons why action is being considered; (2) the objectives of and legal basis for the proposed rule; (3) the class and number of small entities affected; (4) the projected reporting, recordkeeping and other compliance requirements of the proposed rule; (5) any existing federal rules which may duplicate, overlap, or conflict with the proposed rule;⁸ and (6) any significant alternatives to the proposed rule which accomplish its objectives and, at the same time, minimize its impact on small entities.⁹ The preliminary regulatory analysis preceding this Section discussed items 1 and 2 above in detail and therefore will not be repeated here.¹⁰ Thus, this analysis will discuss items 3 through 6 above.

II. Entities to Which the Rule Applies

Amendment of the Trade Regulation Rule on Retail Food Store Advertising and Marketing Practices¹¹ would directly affect all retail foodstore establishments in the United States. In 1984, there were 156,000 retail grocery stores nationwide.¹² According to the definition of the Small Business Administration, any grocery store with less than \$13.5 million in sales, qualifies as a "small business."¹³ In 1984, of the 156,000 grocery stores, all but 2,400 had sales of less than \$12 million.¹⁴

III. Compliance Requirements

The Rule as currently written places a number of different burdens on small businesses. The Rule may also impose added costs on retail grocers in the form of excess inventories of advertised goods in order to avoid selling out and thereby violating the Rule. In addition, it requires extra manpower to reticket and verify prices on advertised goods, for those stores without automated pricing systems, in order to avoid a Rule violation for a mispricing error. Finally, the Rule Requires extensive inventory recordkeeping auditing by the retailer to prove that sufficient stock of the advertised good was indeed ordered and delivered in the event a Rule violation is alleged.

The recordkeeping and other compliance requirements generated by the current Rule fall on both large and

small retail food stores alike. Compliance costs for increased inventories and price audits will tend to occur proportionally to the size of the store. However, to the extent that the costs of compliance have some fixed component, i.e., costs that do not increase in proportion to the size of the retailer,¹⁵ the Rule may impose a greater burden on smaller retailers to larger stores.

The proposed amendments to the Rule would greatly decrease the costs of compliance for all food stores. Because of the existence of the raincheck/substitute item defense to the Rule, a store could avoid excess inventories. The disclosure requirement would allow a store to advertise other items of limited quantity for which there are not substitutes and/or for which the store does not wish to provide rainchecks or substitutes, as long as limitations on availability are clearly and adequately disclosed to consumers. For stores not already following such a policy, implementation of the raincheck/substitute item system would cause the store to incur some additional manpower costs. Also, stores would have to spend some time and use up some advertising display space in order to ensure that advertisements contain a proper disclosure. These costs would not, however, fall disproportionately on small food retailers. Furthermore, they are not costs that are mandated by the proposed Rule, which simply allows a store to use these policies, if it so desires.

IV. Conflict With Existing Federal Rules

The Commission is not aware of any existing federal rules which would conflict, duplicate, or overlap with the proposed Rule as amended.

V. Significant Alternatives

The alternative amendments to the current Rule are summarized in the Preliminary Regulatory Analysis. The Commission presently believes the proposed amendment would be the most effective at minimizing the impact upon small entities. Either a raincheck/substitute item amendment or a disclosure requirement amendment by itself would not provide the consumer benefits of the two in combination. Setting threshold standards of acceptable levels of unavailability would have nearly the same recordkeeping and compliance requirements as exist under the current Rule, assuming the thresholds are set

close to levels of unavailability that exist now. Repeal of the Rule would accrue many of the benefits of the proposed amendments, but might create uncertainty regarding compliance requirements with the Commission's more general prohibitions against deceptive advertising. The proposed amendments maximize the benefits to consumers and food retailers of all sizes by greatly reducing compliance burdens, while retaining explicit guidelines against deceptive practices.

Section L. Proposed Trade Regulation Rule

Notice is hereby given that the Federal Trade Commission, pursuant to the Federal Trade Commission Act, as amended, 15 U.S.C. 41 *et seq.*, the provisions of part 1, subpart B of the Commission's Procedures and Rules of Practice, 16 CFR 1.7 *et seq.*, and the Administrative Procedures Act, 5 U.S.C. 553 *et seq.*, has initiated a proceeding for the promulgation of a trade regulation rule concerning retail food store advertising and marketing practices.

List of Subjects in 16 CFR Part 424

Advertising, Foods, Trade Practices.

Accordingly, the Commission proposes the following Trade Regulation Rule in the form of a revision of 16 CFR part 424. Set forth below is the full text of the proposed rule, which would replace the existing rule.

PART 424—RETAIL STORE ADVERTISING AND MARKETING PRACTICES

Sec.

424.1 Unfair or deceptive practices.

424.2 Defenses.

Authority: 38 Stat. 717, as amended; 15 U.S.C. 41–58.

§ 424.1 Unfair or deceptive practices.

In connection with the sale or offering for sale by retail foodstores of food and grocery products or other merchandise, subject to the jurisdictional requirements of sections 5 and 12 of the Federal Trade Commission Act, it is an unfair or deceptive act or practice to offer such any products for sale at a stated price, by means of any advertisement disseminated in an area served by any stores which are covered by the advertisement, which do not have the advertised products in stock and readily available to customers during the effective period of the advertisement, unless the advertisement clearly and adequately discloses that supplies of the advertised products are

⁷ 5 U.S.C. 603(a) (1983).

⁸ 5 U.S.C. 603(b) (1983).

⁹ 5 U.S.C. 603(c) (1983).

¹⁰ 5 U.S.C. 605(a) explicitly permits such incorporation.

¹¹ 16 CFR Part 424 (1985).

¹² *Progressive Grocer*, April 1985 at 30.

¹³ 13 CFR Part 121.2 (1984).

¹⁴ *Progressive Grocer*, April 1985 at 30.

¹⁵ An example of such a fixed cost might be the cost of retaining legal counsel to deal with matters surrounding compliance with the Rule.

limited and/or the advertised products are available only at some outlets.

§ 424.2 Defense.

No violation of § 424.1 shall be found if: (a) The advertised products were ordered in adequate time for delivery in quantities sufficient to meet reasonably anticipated demands; (b) the retailer offers a "raincheck" for the advertised products; (c) the retailer offers at the advertised price, the same type of product at least comparable in value to the advertised product; or (d) the retailer offers other compensation at least equal to the advertised value.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 85-25342 Filed 10-23-85; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 182 and 186

[Docket No. 78N-0032]

Tall Oil; Tentative Affirmation of GRAS Status as Indirect Human Food Ingredient

Correction

In FR Doc. 85-23472, beginning on page 40204, in the issue of Wednesday, October 2, 1985, make the following correction:

On page 40205, in the third column, in § 186.1557(b) in the second line, "he" should read "the".

BILLING CODE 1505-01-M

21 CFR Part 355

[Docket No. 80N-0042]

Anticaries Drug Products for Over-the-Counter Human Use; Tentative Final Monograph

Correction

In FR Doc. 85-23223 beginning on page 39854 in the issue of Monday, September 30, 1985, make the following correction:

On page 39863, first column, third complete paragraph, ninth line, "0.02=" should have read "0.02-".

BILLING CODE 1505-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 12

[FHWA Docket No. 85-23]

Federal-Aid Highway Program: State Internal Audit Responsibilities

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This Notice of Proposed Rulemaking (NPRM) requests comments on proposed revisions to existing FHWA regulations that set forth a State highway agency's (SHA) responsibilities for audit of its financial operations and the standards under which the audits will be accomplished. The major purpose of this action is to implement the requirements of the Single Audit Act of 1984 (Pub. L. 98-502, 98 Stat. 2327).

DATE: Comments must be received on or before November 25, 1986.

ADDRESS: Submit written comments, preferably in triplicate, to FHWA Docket No. 85-23, Federal Highway Administration, Room 4205, HCC-10, 400 Seventh Street, SW., Washington, D.C. 20590. All comments received will be available for examination between 8:30 a.m. and 3:30 p.m., ET, Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT:

Mr. Max I. Inman, Office of Fiscal Services, (202) 426-0562, or Mr. Michael J. Laska, Office of the Chief Counsel, (202) 426-0762, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: The proposed revisions are necessary to implement the requirements of the Single Audit Act of 1984 (Act). The Act established uniform requirements for the audit of Federal financial assistance, provided to State and local governments. In accordance with the Act, the Office of Management and Budget (OMB) issued Circular A-128, Audits of State and Local Governments, on April 12, 1985, which prescribes the policies, procedures, and guidelines to implement the Act. Each Federal agency is required to include the provisions of OMB Circular A-128 in its regulations. On August 19, 1985, the U.S. Department of Transportation (DOT) issued a regulation in 49 CFR Part 90 (50 FR

33339) that requires the recipients of DOT funds to comply with the provisions of OMB Circular A-128. DOT also issued an Order, number 4600.15¹, dated May 16, 1985, that establishes procedures to be followed by the operating administrations of DOT. The Order primarily defines cognizant agency responsibilities within DOT.

To implement the new audit policies established by the Act, OMB, and DOT, FHWA is proposing to revise 23 CFR Part 12 which will now be titled, "Single Audit Requirements". Each section of the proposed revision is discussed below, briefly explaining any significant change.

Section 12.1 Purpose.

The section would be revised to exclude references to OMB Circular A-102 and DOT Order 4600.9B and to incorporate a reference to the Act.

Section 12.3 Definitions.

The section heading would be changed from "Definitions" to "Audit requirements". The definitions of terms are contained elsewhere in the regulations. The new section, "Audit requirements", would incorporate by reference the audit requirements which have been established in 49 CFR Part 90 for all DOT recipients. These audit requirements are the same requirements specified in OMB Circular A-128 dated April 12, 1985. However, the requirements of 49 CFR Part 90 are amended or clarified by this proposed rule to comply with specific legal or procedural requirements. One amendment to 49 CFR Part 90 is contained in this section to clarify that the determination of eligible costs is based on the provisions of 23 CFR instead of OMB Circulars A-87 and A-102. These OMB circulars contain general requirements and do not recognize the provisions of Title 23, United States Code, that prohibit the payment of administrative, overhead, and noncash costs.

Section 12.5 Applicability.

The section heading would be changed from "Applicability" to "SHA responsibilities". The existing section is not needed because the applicability of the audit requirements is specified in 49 CFR Part 90. The new section, "SHA responsibilities", would prescribe the specific responsibilities of the SHAs as the recipients of Federal-aid highway funds.

¹ DOT directives are available for inspection and copying as prescribed at 49 CFR Part 7, Appendix A.

Section 12.7 Criteria for audit performance and administration.

The section heading would be changed from "Criteria for audit performance and administration" to "Cognizant agency responsibilities". The existing section is not needed because the audit criteria are established in 49 CFR Part 90. The new section, "Cognizant agency responsibilities", would clarify the cognizant agency responsibilities contained in 49 CFR Part 90 when those functions have been assigned to DOT. DOT Order 4600.15 divides cognizant agency responsibilities between the DOT Office of Inspector General (OIG) and the DOT operating administration.

Section 12.9 Annual certification.

The section heading would be changed from "Annual certification" to "FHWA program reviews". The new DOT Order 4600.15 requires recipients to certify in an assistance agreement that an audit will be made. However, when the DOT operating administration includes the audit requirements in its regulations, as FHWA is proposing, the certification is not necessary. The new section, "FHWA program reviews", would specify that additional review work may be performed by FHWA on the operations of a State or local agency. FHWA reviews are not considered additional audit work and are necessary for FHWA to administer its program responsibilities.

Section 12.11 Review of audit reports.

The section heading would be changed from "Review of audit reports" to "SHA internal audit function". The existing section is not needed because the provisions are included in other sections of the regulations. The new section, "SHA internal audit function", would encourage SHAs to maintain an internal audit function. This function is an important internal control and a valuable management tool.

Section 12.13 FHWA followup and disposition actions on reports, findings, and recommendations.

The section heading would be changed from "FHWA followup and disposition actions on reports, findings, and recommendations" to "Audit costs". The existing section is not needed because the audit resolution process is contained in 49 CFR Part 90. The new section, "Audit costs", clarifies that FHWA's requirements for paying audit costs are contained in 23 CFR Part 140, Subpart H.

Section 12.15 Audit coordination.

This section would be removed. Audit coordination is adequately covered in other sections of the regulations.

Section 12.17 Retention of records.

This section would be removed. The retention of records is required by 49 CFR Part 90.

Section 12.19 SHA single audit plans.

This section would be removed. SHA audit plans are no longer considered necessary.

The FHWA has determined that this document contains neither a major rule under Executive Order 12291 nor a significant regulation under DOT regulatory procedures. Although some SHAs may be required to revise the role of their internal auditors or move to an annual audit, the impact of this proposed regulation would be minor. The economic impacts of this action would also be minimal since the amount of grant money available to the States would not be affected. Accordingly, under the criteria of the Regulatory Flexibility Act, it is certified that this action, if promulgated, will not have a significant economic impact on a substantial number of small entities. For the foregoing reasons, a full regulatory evaluation of this proposal is not required.

The information collection requirement contained in § 12.5 of this regulation has been approved by OMB under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and has been assigned OMB control number 2125-0502 which expires on March 31, 1987.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

List of Subjects in 23 CFR Part 12

Accounting, Grant programs—transportation, Highways and roads, Reporting and recordkeeping requirements.

Issued on: October 17, 1985.

R.A. Barnhart,

Federal Highway Administrator, Federal Highway Administration.

In consideration of the foregoing, the FHWA proposes to revise Part 12 of Chapter I of Title 23, Code of Federal Regulations, to read as set forth below.

PART 12—SINGLE AUDIT REQUIREMENTS

Sec.

12.1 Purpose.

12.3 Audit requirements.

12.5 SHA responsibilities.

12.7 Cognizant agency responsibilities.

12.9 FHWA program reviews.

12.11 SHA internal audit function.

12.13 Audit costs.

Authority: 23 U.S.C.315; 31 U.S.C. 7501-7507; 49 CFR 1.46(b).

§ 12.1 Purpose.

To implement the requirements of the Single Audit Act of 1984 (Pub. L. 98-502, 98 Stat. 2327).

§ 12.3 Audit requirements.

(a) State highway agencies (SHA) and local government agencies (including metropolitan planning organizations) which receive Federal-aid highway funds shall comply with the audit requirements established in 49 CFR Part 90 as amended or clarified by this part.

(b) Notwithstanding 49 CFR Part 90, Appendix A, paragraph 8b, the auditor shall determine whether the amounts claimed or used for matching were determined in accordance with the provisions of this chapter.

§ 12.5 SHA responsibilities.

(a) The SHA is responsible for ensuring that its operations are audited in accordance with 49 CFR Part 90 and that findings reported in the audit are properly resolved. The SHA shall submit to the Federal Highway Administration (FHWA) copies of (1) the audit report on its operations, (2) any management letters that are issued in connection with the audit, and (3) the plan for correction of reported findings.

(b) The SHA is responsible for ensuring that subrecipients receiving Federal-aid highway funds through the SHA are audited in accordance with § 12.3. The SHA shall receive and retain the audit reports issued on the operations of subrecipients. When requested by FHWA, the SHA shall provide copies of these audit reports to FHWA.

(The information collection requirement contained in this section was approved by OMB under control number 2125-0502)

§ 12.7 Cognizant agency responsibilities.

When the Office of Management and Budget (OMB) designates the Department of Transportation (DOT) as the cognizant agency for an SHA, the FHWA and the DOT Office of Inspector General (OIG) will share the cognizant agency responsibilities identified in 49 CFR Part 90, Appendix A, paragraph 11.

FHWA is responsible for ensuring that audits are made, reports are received, findings are resolved, and corrective actions are taken. The OIG is responsible for ensuring that audits comply with the audit requirements, providing technical advice, and advising the SHA when it determines that the audit does not meet the audit requirements.

§ 12.9 FHWA program reviews.

Nothing in this part precludes the FHWA from performing program reviews on the operations of a State or local government agency which has received Federal-aid highway funds.

§ 12.11 SHA internal audit function.

The SHAs are encouraged to maintain an effective internal audit function. This function is a valuable internal control and, as such, should be evaluated by the independent auditor as part of the internal control review. The independent auditor should rely on the work of the internal auditors to avoid duplication of audit work.

§ 12.13 Audit costs.

Notwithstanding the provisions of 49 CFR Part 90, Appendix A, paragraph 16, SHAs desiring reimbursement from FHWA for audit costs shall claim those costs in accordance with Part 140, Subpart H of this chapter.

[FR Doc. 85-25405 Filed 10-23-85; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 11

Law and Order on Indian Reservations

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Indian Affairs is proposing to revise its regulations governing courts of Indian offenses to provide those courts with a complete and updated code of laws, and to clarify the jurisdiction of those courts and their relationship to tribal governments and the Department of the Interior.

DATE: Comments must be received no later than December 23, 1985.

ADDRESS: Written comments should be addressed to Chief, Division of Tribal Government Services, Bureau of Indian Affairs, Washington, D.C. 20245.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Branch of Judicial Services, Bureau of Indian Affairs,

Washington, D.C. 20245, telephone number (202) 343-7885.

SUPPLEMENTARY INFORMATION: This proposed rule is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 299 DM 8.

Courts of Indian offenses are established by the Department of the Interior in those areas of Indian country where tribes retain jurisdiction over Indians that is exclusive of state jurisdiction, but where the tribe has not established a tribal court to exercise that jurisdiction.

Although the rules of these courts are established and the judges appointed by the Bureau of Indian Affairs, the regulations provide for substantial participation by tribal governments in their operation. For instance, the appointment and removal of judges is subject to tribal council action and judges, and tribal councils may supplement or supersede provisions in the regulations by adopting their own ordinances subject to the approval of the Bureau of Indian Affairs. The United States Supreme Court has treated these courts as exercising tribal authority. *Williams v. Lee*, 358 U.S. 217, 222-223 (1959).

Some courts of Indian offenses have adjudicated disputes concerning basic issues of tribal government, such as who may exercise tribal authority and what is the extent of a particular tribal official's authority. The role of the Federal courts in adjudicating disputes concerning basic governmental issues has changed and developed over the history of the nation. An Indian tribe may or may not wish to accord its court the same role in resolving such issues that the Federal Government has accorded the Federal courts.

In order to preserve such decisions for the tribes, it is proposed to provide that, absent tribal action, courts of Indian offenses will not adjudicate election disputes or question the decision of the tribal governing body concerning the distribution of tribal authority among tribal officials. The proposed rule provides, however, that the tribal governing body may confer such jurisdiction on the court of Indian offenses. The proposed rule also provides that tribal sovereign immunity in the court of Indian offenses is not waived absent enactment of a tribal ordinance waiving sovereign immunity.

Occasionally, the most basic of all tribal government issues, the identity of the governing body, is brought before the court of Indian offenses. On this issue it is, of course, impossible to defer the decision to the tribal governing body

without adjudicating the underlying issue. The Bureau of Indian Affairs, however, has to make its own determination concerning who speaks for the tribe in order to carry out its own duties with respect to the tribe. It is proposed to provide that Department of the Interior decisions concerning the identity of the tribal governing body will be binding on the court of Indian offenses. It is also proposed, however, to provide that the tribal governing body (as determined by the Department of the Interior) may confer jurisdiction on the court of Indian offenses to resolve such issues on behalf of the tribe.

While the United States Supreme Court has treated the courts as exercising tribal authority, it has expressly reserved the question of the extent to which these courts are to be regarded as Federal instrumentalities. *United States v. Wheeler*, 435 U.S. 313, 327 n.26 (1978). The Department of the Interior must, however, define, for administrative purposes, the effect of the decisions of courts of Indian offenses on its own decision-making process.

Accordingly, it is proposed to provide that decisions of the courts of Indian offenses will be given the same weight in decision-making by the Department of the Interior that is accorded to decisions by tribal courts (that is, courts established by purely tribal action). The binding effect on the Department of the Interior of a tribal court decision, like the binding effect on state court decisions, depends on the issue involved. The proposed rule does not attempt to state the rule for all issues, but merely provides that decisions of courts of Indian offenses and of tribal courts will be treated equally.

To further implement this concept, the proposed rule states explicitly that decisions of a court of Indian offenses are appealable only to the appellate division of the court of Indian offenses, and that the decision of the appellate division is not subject to administrative appeal within the Department of the Interior. Additionally, jurisdiction over Federal and state officials is explicitly limited to the jurisdiction a tribal court would have over such officials.

The present regulations contain a very incomplete criminal code that does not cover many areas of the law that are usually covered in the laws of the state where the reservation is located. The present regulations also contain very sketchy provisions on criminal and civil procedure. The regulations do provide, however, for the local tribal government to enact ordinances that will be enforced in the court of Indian offenses

but apply only to that tribe's Indian country. Many tribes have taken advantage of this provision to supplement the existing regulations extensively.

It is proposed to update the sections on criminal offenses, and essentially create new sections on criminal procedure, domestic relations, probate proceedings, appellate proceedings, and juvenile proceedings.

The proposed criminal procedure sections are largely derived from the draft model code which was prepared pursuant to Title III of the 1968 Civil Rights Act, 82 Stat. 73, 77-78, codified at 25 U.S.C. 1311, with minor exceptions. The proposed regulations specifically provide that if the prosecutor informs the court at the beginning of the trial that imprisonment is not sought, the defendant will not have a right to a jury trial. The Indian Civil Rights Act gives criminal defendants a right to a jury trial for any offense punishable by imprisonment, but authorizes trial by juries of as few as six persons. Under the United States Constitution, juries are not required for crimes punishable by imprisonment for less than six months. It is also proposed to require jury verdicts to be unanimous because of recent caselaw requiring unanimity for juries with less than twelve members.

The sections on criminal offenses are derived to a large extent from the Model Penal Code of the American Law Institute which has stimulated revision and codification of the substantive criminal law of the United States and of numerous states which have drawn upon the Model Code in their code revisions. However, some sections of the Model Code have been modified, and some eliminated totally from the proposed new sections according to the needs and particular circumstances of courts of Indian offenses. The proposed sections on criminal offenses are divided into six important areas of penal law: (1) Offenses involving injury or danger to the person such as assault, reckless endangering, threat, false imprisonment and criminal coercion; (2) sexual offenses; (3) the major offenses against property including reckless burning, criminal mischief, theft, forgery, and fraudulent practices; (4) offenses against the family such as endangering child welfare, and persistent non-support; (5) offenses against public administration including bribery, corrupt influence, perjury and other falsification; (6) offenses against public order such as disorderly conduct, riot, harassment, carrying concealed weapons, and others. In addition, it is provided that violations of duly enacted tribal

ordinances are punishable as provided for in the ordinance.

Felonies that are covered by the Major Crimes Act are excluded in order to avoid the possibility that someone who has committed a serious offense may be immunized from Federal prosecution because of the prohibition against double jeopardy by a prosecution in a court of Indian offenses where the maximum penalty is limited by the Indian Civil Rights Act, 25 U.S.C. 1302(7).

The Indian Civil Rights Act limits penalties to \$500.00 and/or six months in jail. Crimes under this part have been divided in three groups: Misdemeanors, Petty Misdemeanors, and Violations.

It has been decided to delete the sections on adultery, illicit cohabitation, and giving venereal disease to another. The principal reason for punishing illicit cohabitation and adultery is that they contravene community notions of ethical behavior. We regard this fact as an insufficient basis for imposition of penal sanctions. In a variety of aspects, societal ethics set standards of behavior more demanding than the law can expediently enforce. In part, the determination that the penal law should not encompass all kinds of immorality springs from practical concerns of resource allocation. The amount of money available for law enforcement is limited. It makes more sense to concentrate on conduct directly harmful to others than to divert attention and resources to instances of private immorality. Any genuine effort to enforce laws against illicit cohabitation and adultery would mean a slackening of efforts to solve more pressing problems. It would also involve enforcement techniques that could have serious implication for personal privacy. On the other hand, continuing illicit cohabitation and adultery as criminal offenses without a commitment to enforcement would lead to unwanted consequences such as abusive prosecution, selective enforcement, official extortion, blackmail, and general disregard of the penal law. Furthermore, there is no reason to believe that maintaining symbolic condemnations of illicit cohabitation and adultery will have any effect in inhibiting such conduct which has been decriminalized in most jurisdictions. Similarly, giving venereal disease to another is no longer a crime in most jurisdictions. In such instances, we believe that private tort remedies are more suitable than criminal sanctions.

The sections on gambling and game violations have also been deleted because these violations are covered by

proposed section § 11.84, violation of an approved tribal ordinance.

Sections on civil actions remain essentially unchanged. However, proposed § 11.89 provides for the applicability of the Federal Rules of Civil Procedure to courts of Indian offenses.

The sections on domestic relations have been expanded to provide better guidance to the courts in dealing with such matters. These sections are derived from the Uniform Marriage and Divorce Act; with minor modifications. Similarly, sections on probate proceedings have also been expanded. Sections on appellate proceedings have been expanded to provide basic appeal procedures which do not exist under the present code.

New sections creating a children's court have also been developed. These sections are divided into three parts: a general section dealing with definitions, personnel, and jurisdiction; sections dealing with juvenile offender procedure; and sections dealing with minor-in-need-of-care procedure. These sections are based on the Model Children's Code that was developed by the American Indian Law Center in Albuquerque, New Mexico. These sections are proposed to supplant 24 CFR § 11.36 which is inadequate to address the role of the courts in dealing with juvenile problems.

It is also proposed to remove §§ 11.6C, 11.7C, 11.20C, 11.22C, 11.24C, 11.26C, 11.29C, 11.31C, 11.32C, 11.34C, 11.36C, 11.50C, 11.60C, 11.63C, 11.64C, and 11.75C because the Crow Tribe has converted their court of Indian offenses into a tribal court. For similar reasons, it is proposed to delete §§ 11.50ME, 11.55ME, 11.70ME, and §§ 11.88ME-11.98ME pertaining to the Menominee Tribe. In addition, it is proposed to delete §§ 76H to 11.87H because these regulations pertain to the Hopi Tribe and should be enforced in the Hopi Tribal Court. Consequently, there is no apparent reason to keep these regulations under 25 CFR Part 11.

Under 18 U.S.C. 1152, Federal courts have jurisdiction over offenses in the Indian country in which either the victim or the accused is an Indian and states have jurisdiction over offenses involving only non-Indians. That statute defers to Indian jurisdiction over offenses involving only Indians. Tribal criminal jurisdiction covers crimes by Indians in Indian country that are victimless or that involve either an Indian or non-Indian victim. Courts of Indian offenses were established to exercise that Indian jurisdiction in those portions of Indian country where there are no tribal courts.

The 1948 definition of Indian country codified at 18 U.S.C. 1151 applies to 18 U.S.C. 1152 and, consequently, that statute refrains from asserting Federal court jurisdiction not just on reservations but also on Indian allotments and in dependent Indian communities. For that reason courts of Indian offenses, especially in Oklahoma, also exercise jurisdiction over off-reservation Indian country. For that reason it is proposed to use the term "Indian country" instead of "reservation" in describing the jurisdiction of courts of Indian offenses.

A new section, 25 CFR 11.2 has been added to make it clear that changes in the regulations do not affect criminal or civil liability for actions that occurred prior to the effective date of the change.

As is presently the case, courts will be established or abolished through the Federal rule making procedure by adding or deleting the name of a tribe from the list. The Bureau of Indian Affairs will continue to assist tribes with courts of Indian offenses to develop their own codes and convert to tribal courts. It is the Bureau of Indian Affairs' policy to encourage the replacement of courts of Indian offenses with tribal courts.

It is proposed to delete the Omaha Tribe from the listing of courts of Indian offenses under § 11.1(a) because it has converted its court of Indian offenses into a tribal court.

When these rules are published as final rules, they will not be made effective until six months after their publication in the Federal Register to provide time to plan for the change at each affected reservation.

The Department of the Interior has determined that this document is not a major rule under the criteria established by Executive Order 12291 and does not have a significant economic effect on a substantial number of small entities under the criteria established by the Regulatory Flexibility Act. The intended effect of this rule is to update the sections under 25 CFR Part 11 to provide courts of Indian offenses with a more complete set of rules. The proposed revision will not require additional staffing for these courts. It is not anticipated that this revision will have any effect on the annual caseload of these courts because it does not enlarge their jurisdiction, but mandates procedural guarantees. While it is true that some criminal provisions such as issuance of bad checks and defrauding secured creditors have been added, others, such as giving venereal disease to another and illicit cohabitation have been deleted, so that the net effect on caseload is going to be negligible. Courts

of Indian offenses are funded in their entirety by the Federal Government and do not receive additional funding from tribal governments. Because we do not foresee any economic effect on courts of Indian offenses as a result of this revision, there will be no requirement of additional outlays by the Federal Government or the tribes affected by the proposed revision.

The primary author of this document is George T. Skibine, Branch of Judicial Services, Division of Tribal Government Services, Bureau of Indian Affairs telephone number (202) 343-7885.

The information collection requirements contained in §§ 11.91 and 11.97 have been submitted to the Office of Management and Budget for approval as required by 44 U.S.C. 3501 *et seq.* The collection of this information will not be required until it has been approved by the Office of Management and Budget.

List of Subjects in 25 CFR Part 11

Courts, Indians—law, Law enforcement and penalties.

It is proposed to revise 25 CFR Part 11 to read as follows:

PART 11—LAW AND ORDER ON INDIAN RESERVATIONS

Subpart A—Application; Jurisdiction

Sec.

- 11.1 Listing of courts of Indian offenses.
- 11.2 Prospective application of regulations.
- 11.3 Criminal jurisdiction.
- 11.4 Civil jurisdiction.
- 11.5 Jurisdictional limitations.

Subpart B—Courts of Indian Offenses; Personnel; Administration

- 11.6 Composition of court.
- 11.7 Appointment of magistrates.
- 11.8 Removal of magistrates.
- 11.9 Court clerks.
- 11.10 Prosecutors.
- 11.11 Standards governing appearance of attorneys and lay counselors.
- 11.12 Court records.
- 11.13 Cooperation of Bureau of Indian Affairs employees.
- 11.14 Payment of judgments from individual Indian money accounts.
- 11.15 Disposition of fines.

Subpart C—Criminal Procedure

- 11.16 Complaints.
- 11.17 Arrests.
- 11.18 Arrest warrants.
- 11.19 Notification of rights at time of arrest.
- 11.20 Summons in lieu of warrant.
- 11.21 Search warrants.
- 11.22 Search without a warrant.
- 11.23 Disposition of seized property.
- 11.24 Commitments.
- 11.25 Arraignments.
- 11.26 Bail.
- 11.27 Subpoenas.
- 11.28 Witness fees.
- 11.29 Trial procedure.
- 11.30 Jury trials.

Sec.

- 11.31 Sentencing.
- 11.32 Probation.
- 11.33 Parole.
- 11.34 Extradition.

Subpart D—Criminal Offenses

- 11.35 Assault.
- 11.36 Recklessly endangering another person.
- 11.37 Terroristic threats.
- 11.38 Unlawful restraint.
- 11.39 False imprisonment.
- 11.40 Interference with custody.
- 11.41 Criminal coercion.
- 11.42 Sexual assault.
- 11.43 Indecent exposure.
- 11.44 Reckless burning or exploding.
- 11.45 Criminal mischief.
- 11.46 Criminal trespass.
- 11.47 Theft.
- 11.48 Receiving stolen property.
- 11.49 Embezzlement.
- 11.50 Fraud.
- 11.51 Forgery.
- 11.52 Extortion.
- 11.53 Misbranding.
- 11.54 Unauthorized use of automobiles and other vehicles.
- 11.55 Tampering with records.
- 11.56 Bad checks.
- 11.57 Unauthorized use of credit cards.
- 11.58 Defrauding secured creditors.
- 11.59 Endangering welfare of children.
- 11.60 Persistent non-support.
- 11.61 Bribery.
- 11.62 Threats and other improper influence in official and political matters.
- 11.63 Retaliation for past official action.
- 11.64 Perjury.
- 11.65 False alarms.
- 11.66 False reports.
- 11.67 Impersonating a public servant.
- 11.68 Disobedience to lawful order of court.
- 11.69 Resisting arrest.
- 11.70 Obstructing justice.
- 11.71 Escape.
- 11.72 Bail jumping.
- 11.73 Flight to avoid prosecution or judicial process.
- 11.74 Witness tampering.
- 11.75 Tampering with or fabricating physical evidence.
- 11.76 Disorderly conduct.
- 11.77 Riot: Failure to disperse.
- 11.78 Harassment.
- 11.79 Carrying concealed weapons.
- 11.80 Reckless driving.
- 11.81 Cruelty to animals.
- 11.82 Maintaining a public nuisance.
- 11.83 Abuse of office.
- 11.84 Violation of an approved tribal ordinance.
- 11.85 Maximum fines and sentences of imprisonment.

Subpart E—Civil Actions

- 11.86 Law applicable to civil actions.
- 11.87 Judgments in civil actions.
- 11.88 Costs in civil actions.
- 11.89 Applicable civil procedure.
- 11.90 Applicable rules of evidence.

Subpart F—Domestic Relations

- 11.91 Marriages.
- 11.92 Marriage licenses.

- Sec.
 11.93 Solemnization.
 11.94 Invalid or prohibited marriages.
 11.95 Declaration of invalidity.
 11.96 Dissolution.
 11.97 Dissolution proceedings.
 11.98 Temporary orders and temporary injunctions.
 11.99 Final decree; Disposition of property; Maintenance; Child support; custody.
 11.100 Determination of paternity and support.
 11.101 Appointment of guardians.
 11.102 Change of name.

Subpart G—Probate Proceedings

- 11.103 Probate jurisdiction.
 11.104 Duty to present will for probate.
 11.105 Proving and admitting will.
 11.106 Petition and order to probate estate.
 11.107 Appointment and duties of executor or administrator.
 11.108 Removal of executor or administrator.
 11.109 Appointment and duties of appraiser.
 11.110 Claims against the estate.
 11.111 Sale of property.
 11.112 Final account.
 11.113 Determination of the court.
 11.114 Descent and distribution.
 11.115 Closing estate.
 11.116 Small estates.

Subpart H—Appellate Proceedings

- 11.117 Jurisdiction of appellate division.
 11.118 Procedure on appeal.
 11.119 Judgment against surety.
 11.120 Record on appeal.
 11.121 Briefs and memoranda.
 11.122 Oral argument.
 11.123 Rules of court.

Subpart I—Children's Court

- 11.201 Definitions.
 11.202 The children's court established.
 11.203 Non-criminal proceedings.
 11.204 Presenting officer.
 11.205 Guardian ad litem.
 11.206 Jurisdiction.
 11.207 Rights of parties.
 11.208 Transfer to court of Indian offenses.
 11.209 Court records.
 11.210 Law enforcement records.
 11.211 Expungement.
 11.212 Appeal.
 11.213 Contempt of court.

Juvenile Offender Procedure

- 11.214 Complaint.
 11.215 Warrant.
 11.216 Custody.
 11.217 Law enforcement officer's duties.
 11.218 Detention and shelter care.
 11.219 Preliminary inquiry.
 11.220 Investigation by the presenting officer.
 11.221 Petition.
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Authority: 5 U.S.C. 301; R.S. Sec. 463, 25 U.S.C. 2; R.S. Sec. 465, 25 U.S.C. 9; 42 Stat. 208, 25 U.S.C. 13; 38 Stat. 586, 25 U.S.C. 200.

Subpart A—Application; Jurisdiction

§ 11.1 Listing of courts of Indian offenses.

(a) Except as otherwise provided in this title, the regulations under this part are applicable to the Indian country (as defined in 18 U.S.C. 1151) occupied by the following tribes:

- (1) Flandreau Santee Sioux Tribe (South Dakota).
- (2) Yankton Sioux Tribe (South Dakota).
- (3) Shoshone and Arapahoe Tribes of the Wind River Reservation (Wyoming).
- (4) Bois Forte Band of the Minnesota Chippewa Tribe (Minnesota).
- (5) Red Lake Band of Chippewa Indians (Minnesota).
- (6) Cocopah Tribe (Arizona).
- (7) Kaibab Band of Paiute Indians (Arizona).
- (8) Paiute Shoshone Tribe of the Fallon Reservation and Colony (Nevada).
- (9) Confederated Tribes of the Goshute Reservation (Nevada).
- (10) Lovelock Paiute Tribe (Nevada).
- (11) Te-Moak Band of Western Shoshone Indians (Nevada).
- (12) Yomba Shoshone Tribe (Nevada).
- (13) Duckwater Shoshone Tribe (Nevada).
- (14) Kootenai Tribe (Idaho).
- (15) Shoalwater Bay Tribe (Washington).
- (16) Eastern Band of Cherokee Indians (North Carolina).
- (17) Mississippi Band of Choctaw Indians (Mississippi).
- (18) Tribes other than the Osage Tribe located in the former Oklahoma Territory (Oklahoma).
- (19) Hoopa Valley Tribe, Yurok Tribe, and Coast Indian Community of California (California) [Jurisdiction limited to special fishing regulations].
- (20) Louisiana Area (Louisiana) [Includes Coushatta and other tribes in the State of Louisiana which occupy Indian country and which accept the application of this part;

provided that this part shall not apply to any Louisiana tribe other than the Coushatta Tribe until notice of such application has been published in the Federal Register.)

(b) It is the purpose of the regulations in this part to provide adequate machinery for the administration of justice for those Indian tribes in which traditional agencies for the enforcement of tribal law and custom have broken down and for which no adequate substitute has been provided under Federal or state law.

(c) The regulations in this part shall continue to apply to tribes listed under § 11.1(a) until a law and order code has been adopted by the tribe in accordance with its constitution and by-laws or other governing documents, has become effective, and the name of the tribe has been deleted from the listing of courts of Indian offenses under § 11.1(a).

(d) For the purposes of the enforcement of the regulations in this part, an Indian is defined as a person who is a member of an Indian tribe which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs.

(e) The governing body of each tribe occupying the Indian country over which a court of Indian offenses has jurisdiction may enact ordinances which, when approved by the Assistant Secretary—Indian Affairs or his or her designee, shall be enforceable in the court of Indian offenses having jurisdiction over the Indian country occupied by that tribe, and shall supersede any conflicting regulation in this part.

(f) Each court of Indian offenses shall apply the customs of the tribe occupying the Indian country over which it has jurisdiction to the extent that they are consistent with the regulations of this part.

§ 11.2 Prospective application of regulations.

(a) No Indian may be prosecuted for an offense under this part if it was committed prior to the effective date of a change of the regulations under this part and was not defined as a criminal offense prior to the change.

(b) An Indian may be prosecuted for an offense under this part if it was committed prior to the effective date of a change of the regulations under this part so long as the offense was so defined in the regulations in effect at the time it was committed.

(c) No change to the regulations under this part that alters the liability of a party in a civil suit applies to any cause

of action arising prior to the effective date of the change.

(d) Liability in any civil suit under the regulations of this part shall be determined in accordance with the regulations as they may exist at the time the cause of action arose.

§ 11.3 Criminal jurisdiction.

Except as otherwise provided in this title, each court of Indian offenses shall have jurisdiction over any action by an Indian that is made a criminal offense under this part and that occurred within the Indian country subject to the court's jurisdiction.

§ 11.4 Civil jurisdiction.

Except as otherwise provided in this title, each court of Indian offenses shall have jurisdiction over any civil action arising within the territorial jurisdiction of the court in which the defendant is an Indian, and of all other suits between Indians and non-Indians which are brought before the court by stipulation of the parties.

§ 11.5 Jurisdictional limitations.

(a) No court of Indian offenses may exercise any jurisdiction over a Federal or state official that it could not exercise if it were a tribal court.

(b) Unless otherwise provided by a resolution of the tribal governing body of the tribe occupying the Indian country over which a court of Indian offenses has jurisdiction, no court of Indian offenses may adjudicate an election dispute or take jurisdiction over a suit against the tribe.

(c) The decision of the Bureau of Indian Affairs on who is a tribal official is binding on a court of Indian offenses.

(d) The Interior Department will accord the same weight to decisions of a court of Indian offenses that it accords to decisions of a tribal court.

(e) A tribe may not be sued in a court of Indian offenses unless its tribal governing body explicitly waives its tribal immunity by tribal resolution.

Subpart B—Courts of Indian Offenses; Personnel; Administration

§ 11.6 Composition of court.

(a) Each court of Indian offenses shall be composed of a trial division and an appellate division.

(b) A chief magistrate will be appointed for each court who will, in addition to other judicial duties, be responsible for the administration of the court and the supervision of all court personnel.

(c) Appeals shall be heard by a panel of three magistrates who were not involved in the trial of the case.

(d) Decisions of the appellate division are final and are not subject to administrative appeals within the Department of the Interior.

§ 11.7 Appointment of magistrates.

(a) Each magistrate shall be appointed by the assistant Secretary—Indian Affairs or his or her designee subject to confirmation by a majority vote of the tribal governing body of the tribe occupying the Indian country over which the court has jurisdiction.

(b) Each magistrate shall hold office for a period of four years, unless sooner removed for cause or by reason of the abolition of the office, but is eligible for reappointment.

(c) No person is eligible to serve as a magistrate of a court of Indian offenses who has ever been convicted of a felony or, within one year then last past, of a misdemeanor.

(d) No magistrate shall be qualified to act as such wherein he or she has any direct interest or wherein any relative by blood or marriage, in the first or second degree, is a party.

(e) A tribal governing body may set forth such other qualifications for magistrate of the court of Indian offenses as it deems appropriate, subject to the approval of the Assistant Secretary—Indian Affairs, or his or her designee.

(f) A tribal governing body shall also establish requirements for the training of magistrates of the court of Indian offenses, as it deems appropriate.

§ 11.8 Removal of magistrates.

Any magistrate of a court of Indian offenses may be suspended, dismissed or removed by the Assistant Secretary—Indian Affairs, or his or her designee, for cause, upon the recommendation of the tribal governing body, or pursuant to his or her own discretion.

§ 11.9 Court clerks.

(a) Except as may otherwise be provided in a contract with the tribe occupying the Indian country over which the court has jurisdiction, the superintendent shall appoint a clerk of court for each court of Indian offenses within his or her jurisdiction.

(b) The clerk shall render assistance to the court, to local law enforcement officers and to individual members of the tribe in the drafting of complaints, subpoenas, warrants, commitments, and other documents incidental to the functions of the court. The clerk shall also attend and keep a record of all proceedings of the court and manage all monies received by the court.

§ 11.10 Prosecutors.

Except as may otherwise be provided in a contract with the tribe occupying the Indian country over which the court has jurisdiction, the superintendent shall appoint a prosecutor for each court of Indian offenses within his or her jurisdiction.

§ 11.11 Standards governing appearance of attorneys and lay counselors.

(a) No defendant in a criminal proceeding shall be denied the right to counsel.

(b) The chief magistrate shall prescribe in writing standards governing the admission and practice in the court of Indian offenses of professional attorneys and lay counselors.

§ 11.12 Court records.

(a) Each court of Indian offenses shall keep a record of all proceedings of the court containing the title of the case, the names of the parties, the complaint, all pleadings, the names and addresses of all witnesses, the date of any hearing or trial, the name of any magistrate conducting such hearings or trials, the findings of the court or jury, the judgment and any other information the court determines is important to the case.

(b) The record in each case shall be available for inspection by the parties to the case.

(c) Except for cases in which a juvenile is a party or the subject of a proceeding, all case records shall be available for inspection by the public.

(d) Such court records are part of the records of the BIA agency having jurisdiction over the Indian country where the court of Indian offenses is located.

§ 11.13 Cooperation by Bureau of Indian Affairs employees.

No employee of the Bureau of Indian Affairs may obstruct, interfere with or control the functions of any court of Indian offenses, or influence such functions in any manner except as permitted by Federal statutes or the regulations in this part or in response to a request for advice or information from the court.

§ 11.14 Payment of judgments from individual Indian money accounts.

(a) Any court of Indian offenses may make application to the superintendent who administers the individual Indian money account of a defendant who has failed to satisfy a money judgment from the court to obtain payment of the judgment from funds in the defendant's account. The court shall certify the record of the case to the superintendent.

If the superintendent so directs, the disbursing agent shall pay over to the injured party the amount of the judgment or such lesser amount as may be specified by the superintendent.

(b) A judgement of a court of Indian offenses shall be considered a lawful debt in all proceedings held by the Department of the Interior or by a court of Indian offenses to distribute decedents' estates.

§ 11.15 Disposition of fines.

All money fines imposed for the commission of an offense shall be in the nature of an assessment for the payment of designated court expenses. The fines assessed shall be paid over by the clerk of the court to the disbursing agent of the reservation for deposit as a "special deposit, court funds" to the disbursing agent's official credit in the Treasury of the United States. The disbursing agent shall withdraw such funds, in accordance with existing regulations, upon order of the clerk of the court signed by a judge of the court for the payment of specified expenses. The disbursing agent and the clerk of the court shall keep an accounting of all such deposits and withdrawals available for public inspection.

Subpart C—Criminal Procedure

§ 11.16 Complaints.

(a) A complaint is a written statement of the essential facts charging that a named individual(s) has committed a particular offense. All criminal prosecutions shall be initiated by a complaint filed with the court by a law enforcement officer and sworn to by a person having personal knowledge of the offense.

(b) Complaints shall contain:

(1) The signature of the complaining witness, or witnesses, sworn before a magistrate, a court clerk, a prosecutor, or any law enforcement officer.

(2) A written statement by the complaining witness or witnesses having personal knowledge of the violation describing in ordinary language the nature of the offense committed including the time and place as nearly as may be ascertained.

(3) The name or description of the person alleged to have committed the offense.

(4) A description of the offense charged and the section of the code allegedly violated.

(c) Complaints must be submitted without unnecessary delay by a law enforcement officer to the prosecutor and, if he or she approves, to a judge to determine whether an arrest warrant or summons should be issued.

(d) When an accused has been arrested without a warrant, a complaint shall be filed forthwith with the court for review as to whether probable cause exists to hold the accused, and in no instance shall a complaint be filed later than at the time of arraignment.

§ 11.17 Arrests.

(a) Arrest is the taking of a person into police custody in order that he may be held to answer for a criminal offense.

(b) No law enforcement officer shall arrest any person for a criminal offense except when:

(1) The officer shall have a warrant signed by a magistrate commanding the arrest of such person, or the officer knows for a certainty that such a warrant has been issued; or

(2) the offense shall occur in the presence of the arresting officer; or

(3) the officer shall have probable cause to believe that the person arrested has committed an offense.

§ 11.18 Arrest warrants.

(a) Each magistrate of a court of Indian offenses shall have the authority to issue warrants to apprehend any person the magistrate has probable cause to believe has committed a criminal offense in violation of the regulations under this part based on a written complaint filed with the court by a law enforcement officer and bearing the signature of the complaint.

(b) The arrest warrant shall contain the following information:

(1) Name or description and address, if known, of the person to be arrested.

(2) Date of issuance of the warrant.

(3) Description of the offense charged.

(4) Signature of the issuing magistrate.

(c) Such warrants may be served only by a BIA or tribal police officer or other officer commissioned to enforce the regulations of this part.

§ 11.19 Notification of rights at time of arrest.

Upon arrest the suspect shall be advised immediately of the following rights:

(a) That he or she has the right to remain silent.

(b) That any statements made by him or her may be used against him or her in court.

(c) That he or she has the right to obtain counsel.

§ 11.20 Summons in lieu of warrant.

(a) When otherwise authorized to arrest a suspect, a law enforcement officer or a magistrate may, in lieu of a warrant, issue a summons commanding the accused to appear before the court of Indian offenses at a stated time and place and answer to the charge.

(b) The summons shall contain the same information as a warrant, except that it may be signed by a police officer.

(c) The summons shall state that if a defendant fails to appear in response to a summons, a warrant for his or her arrest shall be issued.

(d) The summons, together with a copy of the complaint, shall be served upon the defendant by delivering a copy to the defendant personally or by leaving a copy at his usual residence or place of business with a person of suitable age and discretion who also resides or works there. Service shall be made by an authorized law enforcement officer, who shall make a return of service which shall be filed with the record of the case.

§ 11.21 Search warrants.

(a) Each magistrate of a court of Indian offenses shall have the authority to issue a warrant for the search of premises and for the seizure of physical evidence of a criminal violation under the regulations of this part located within the Indian country over which the court has jurisdiction.

(b) No warrant of search or seizure may issue unless it is based on a written and signed statement establishing to the satisfaction of the magistrate that probable cause exists to believe that the search will lead to discovery of evidence of a criminal violation under the regulations of this part.

(c) No warrant for search or seizure shall be valid unless it contains the name or description of the person, vehicle, or premises to be searched, describes the evidence to be seized, and bears the signature of the magistrate who issued it.

(d) Warrants may be executed only by a BIA or tribal police officer or other officer commissioned to enforce the regulations under this part. The executing officer shall return the warrant to the court of Indian offenses within the time limit shown on the face of the warrant, which in no case shall be longer than ten (10) days from the date of issuance. Warrants not returned within such time limits shall be void.

§ 11.22 Search without a warrant.

No law enforcement officer shall conduct any search without a valid warrant except:

(a) Incident to making a lawful arrest; or

(b) with the voluntary consent of the person being searched; or

(c) when the search is of a moving vehicle and the officer has probable cause to believe that it contains

contraband, stolen property, or property otherwise unlawfully possessed.

§ 11.23 Disposition of seized property.

(a) The officer serving and executing a warrant shall make an inventory of all property, and a copy of such inventory shall be left with every person from whom property is seized.

(b) A hearing shall be held by the court of Indian offenses to determine the disposition of all seized property. Upon satisfactory proof of ownership, the property shall be delivered immediately to the owner, unless such property is contraband or is to be used as evidence in a pending case. Property seized as evidence shall be returned to the owner after final judgment. Property confiscated as contraband shall be destroyed or otherwise lawfully disposed of as ordered by the court of Indian offenses.

§ 11.24 Commitments.

No Indian may be detained, jailed or imprisoned under the regulations of this part for longer than 36 hours unless there be issued a commitment bearing the signature of a magistrate of the court of Indian offenses. A temporary commitment shall be issued for each Indian held before trial. A final commitment shall be issued for each Indian sentenced to jail after trial.

§ 11.25 Arraignments.

(a) Arraignment is the bringing of an accused before the court, informing him or her of his or her rights and of the charge(s) against him or her, receiving the plea, and setting conditions of pretrial release as appropriate in accordance with this part.

(b) Arraignment shall be held in open court without unnecessary delay after the accused is taken in custody and in no instance shall arraignment be later than the next regular session of work.

(c) Before an accused is required to plead to any criminal charges the magistrate shall:

(1) Read the complaint to the accused and determine that he or she understands it and the section(s) of this part that he or she is charged with violating, including the maximum authorized penalty; and

(2) Advise the accused that he or she has the right to remain silent, to be tried by a jury if the offense charged is punishable by imprisonment, to be represented by counsel, and that the arraignment will be postponed should he or she desire to consult with counsel.

(d) The magistrate shall call upon the defendant to plead to the charge:

(1) If the accused plead "not guilty" to the charge, the magistrate shall then

inform the accused of the trial date and set conditions for release prior to trial.

(2) If the accused pleads "guilty" to the charge, the magistrate shall accept the plea only if he or she is satisfied that the plea is made voluntarily and that the accused understands the consequences of the plea, including the rights waived by the plea. The magistrate may then impose sentence or defer sentencing for a reasonable time in order to obtain any information he or she deems necessary for the imposition of a just sentence. The accused shall be afforded an opportunity to be heard by the court prior to sentencing.

(3) If the accused refuses to plead, the judge shall enter a plea of "not guilty" on his or her behalf.

(e) The court may, in its discretion, allow a defendant to withdraw a plea of guilty if it appears that the interest of justice would be served by doing so.

§ 11.26 Bail.

(a) Each Indian charged with a criminal offense under this part shall be entitled to release from custody pending trial under whichever one or more of the following conditions is deemed necessary to reasonably assure the appearance of the person at any time lawfully required:

(1) Release on personal recognizance upon execution by the accused of a written promise to appear at trial and all other lawfully required times.

(2) Release to the custody of a designated person or organization agreeing to assure the accused's appearance.

(3) Release with reasonable restrictions on the travel, association, or place of residence of the accused during the period of release.

(4) Release after deposit of a bond or other sufficient collateral in an amount specified by the magistrate or a bail schedule.

(5) Release after execution of bail agreement by two responsible members of the community.

(6) Release upon any other condition deemed reasonably necessary to assure the appearance of the accused as required.

(b) Any law enforcement officer authorized to do so by the court may admit an arrested person to bail pending trial pursuant to a bail schedule and conditions prepared by the court.

(c) A convicted Indian may be released from custody pending appeal on such conditions as the magistrate determines will reasonably assure the appearance of the accused unless the magistrate determines that release of the accused is likely to pose a danger to

the community, the accused, or any other person.

(d) The court of Indian offenses may revoke its release of the defendant and order him or her committed at any time where it determines that the conditions of release will not reasonably assure the appearance of the defendant, or if any conditions of release have been violated.

§ 11.27 Subpoenas.

(a) Upon request of the defendant or upon the court's own initiative, the court shall issue subpoenas to compel the testimony of witnesses, or the production of books, records, documents or any other physical evidence relevant to the determination of the case and not an undue burden on the person possessing the evidence. The clerk of court may act on behalf of the court and issue subpoenas which have been signed by a magistrate of the court of Indian offenses and which are to be served within the Indian country over which the court of Indian offenses has jurisdiction.

(b) A subpoena shall bear the signature of the chief magistrate or other magistrate of the court of Indian offenses, and it shall state the name of the court, the name of the person or description of the physical evidence to be subpoenaed, the title of the proceeding, and the time and place where the witness is to appear or the evidence is to be produced.

(c) A subpoena may be served at any place within or without the Indian country over which the court of Indian offenses has jurisdiction, but any subpoena to be served outside of the Indian country over which the court of Indian offenses has jurisdiction shall be issued personally by a magistrate of the court of Indian offenses.

(d) A subpoena may be served by any law enforcement officer or other person appointed by the court for such purpose. Service of a subpoena shall be made by delivering a copy of it to the person named or by leaving a copy at his or her place of residence or business with any person of suitable age and discretion who also resides or works there.

(e) Proof of service of the subpoena shall be filed with the clerk of court by noting on the back of a copy of the subpoena the date, time and place that it was served and noting the name of the person to whom it was delivered. Proof of service shall be signed by the person who actually served the subpoena.

(f) In the absence of a justification satisfactory to the court, a person who fails to obey a subpoena may be deemed to be in contempt of court and a bench

warrant may be issued for his or her arrest.

§ 11.28 Witness fees.

(a) Each witness answering a subpoena is entitled to a fee of not less than the hourly minimum wage scale established by 29 U.S.C. 206(a)(1) and any of its subsequent revisions, plus actual cost of travel. Each witness testifying at a hearing shall receive pay for a full day (eight hours) plus travel allowance.

(b) The court of Indian offenses may order any party calling a witness to testify without a subpoena to compensate the witness for actual traveling and living expenses incurred in testifying.

(c) If the court of Indian offenses finds that a complaint was not filed in good faith but with a frivolous or malicious intent, it may order the complainant to reimburse the court for expenditures incurred under this section, and such order may constitute a judgment upon which execution may levy.

§ 11.29 Trial procedure.

(a) The time and place of court sessions, and all other details of judicial procedure shall be set out in rules of court approved by the chief magistrate of the court of Indian offenses.

(b) Courts of Indian offenses shall not be bound by common law rules of evidence, or the rules of evidence applicable in state or Federal courts.

§ 11.30 Jury trials.

(a) In any criminal case punishable by a sentence of six months in jail and in any criminal case in which the prosecutor informs the court before the case comes to trial that a jail sentence will be sought, the defendant has a right, upon demand, to a jury trial. If the prosecutor informs the court that no prison sentence will be sought, the court may not impose a prison sentence for the offense.

(b) A jury shall consist of six Indian residents of the vicinity in which trial is held, selected from a list of eligible jurors prepared each year by the court. An eligible juror shall be at least 18 years of age, shall not have been convicted of a felony, and shall not otherwise be unqualified according to standards established by the court of Indian offenses under its general rule-making authority. Any party may challenge without cause not more than three members of the jury panel so chosen.

(c) The magistrate shall instruct the jury with regard to the applicable law and the jury shall decide all questions of fact on the basis of the law.

(d) The jury shall deliberate in secret and return a verdict of guilty or not guilty. Any verdict must be unanimous.

(e) Each juror who serves on a jury is entitled to a fee not less than the hourly minimum wage scale established by 29 U.S.C. 206(a)(1), and any of its subsequent revisions, plus fifteen cents per mile travel costs. Each juror shall receive pay for a full day (eight hours) for any portion of a day served, plus travel allowance.

§ 11.31 Sentencing.

(a) Any person who has been convicted in a court of Indian offenses of a criminal offense under the regulations of this part may be sentenced to one or a combination of the following penalties:

(1) Imprisonment for a period not to exceed the maximum permitted by the section defining the offense, which in no case shall be greater than six months.

(2) A money fine in an amount not to exceed the maximum permitted by the section defining the offense, which in no case shall be greater than five hundred dollars (\$500).

(3) Labor for the benefit of the tribe.

(4) Rehabilitative measures.

(b) In addition to or in lieu of the penalties provided in subsection (a) above, the court may require a convicted offender who has inflicted injury upon the person or property of another to make restitution or compensate the injured person by means of the surrender of property, payment of money damages, or the performance of any other act for the benefit of the injured party.

(c) If, solely because of indigency, a convicted offender is unable to pay forthwith a money fine assessed under any applicable section, the court shall allow him or her a reasonable period of time to pay the entire sum or allow him or her to make reasonable installment payments to the clerk of court at specified intervals until the entire sum is paid. If the offender defaults on such payments the court may find him or her in contempt of court and imprison him or her accordingly.

§ 11.32 Probation.

(a) Where a sentence of imprisonment has been imposed on a convicted offender, the court of Indian offenses may, in its discretion, suspend the serving of such sentence and release the person on probation under any reasonable conditions deemed appropriate by the court, provided that the period of probation shall not exceed the maximum term of sentence set for such offense under the regulations of this part.

(b) Any person who violates the terms of his or her probation may be required by the court to serve the sentence originally imposed or such part of it as the court may determine to be suitable giving consideration to all the circumstances, provided that such revocation of probation shall not be ordered without a hearing before the court at which the offender shall have the opportunity to explain his or her actions.

§ 11.33 Parole.

(a) Any person sentenced by the court to detention or labor shall be eligible for parole at such time and under such reasonable conditions as set by the court of Indian offenses.

(b) Any person who violates the conditions of his or her parole may be required by the court to serve the whole original sentence, provided that such revocation of parole shall not be ordered without a hearing before the court at which the offender shall have the opportunity to explain his or her actions.

§ 11.34 Extradition.

Any court of Indian offenses may order delivery to the proper state, tribal or BIA law enforcement authorities of any Indian found within the jurisdiction of the court, who is charged with an offense in another jurisdiction. Prior to delivery to the proper officials, the accused shall be accorded a right to contest the propriety of the court's order in a hearing before the court.

Subpart D—Criminal Offenses

§ 11.35 Assault.

(a) An Indian is guilty of assault if he or she:

(1) Attempts to cause or purposely, knowingly or recklessly causes bodily injury to another; or

(2) Negligently causes bodily injury to another with a deadly weapon; or

(3) Attempts by physical menace to put another in fear of imminent serious bodily injury.

(b) Assault is a misdemeanor unless committed in a fight or scuffle entered into by mutual consent, in which case it is a petty misdemeanor.

§ 11.36 Recklessly endangering another person.

An Indian commits a misdemeanor if he or she recklessly engages in conduct which places or may place another person in danger of death or serious bodily injury. Recklessness and danger shall be presumed where an Indian knowingly points a firearm at or in the direction of another person, whether or

not the actor believed the firearm to be loaded.

§ 11.37 Terroristic threats.

An Indian is guilty of a misdemeanor if he or she threatens to commit any crime of violence with purpose to terrorize another or to cause evacuation of a building, place of assembly, or facility of public transportation, or otherwise to cause serious public inconvenience, or in reckless disregard to the risk of causing such terror or inconvenience.

§ 11.38 Unlawful restraint.

An Indian commits a misdemeanor if he or she knowingly:

(a) Restrains another unlawfully in circumstances exposing him or her to risk of serious bodily injury; or

(b) Holds another in a condition of involuntary servitude.

§ 11.39 False imprisonment.

An Indian commits a misdemeanor if he or she knowingly restrains another unlawfully so as to interfere substantially with his or her liberty.

§ 11.40 Interference with custody.

(a) Custody of children. An Indian commits a misdemeanor if he or she knowingly or recklessly takes or entices any child under the age of 18 from the custody of his or her parent, guardian or other lawful custodian, when he or she has no privilege to do so.

(b) Custody of committed persons. An Indian is guilty of a misdemeanor if he or she knowingly or recklessly takes or entices any committed person away from lawful custody when he or she is not privileged to do so. "Committed person" means, in addition to anyone committed under judicial warrant, any orphan, neglected or delinquent child, mentally defective or insane person, or other dependent or incompetent person entrusted to another's custody by or through a recognized social agency or otherwise by authority of law.

§ 11.41 Criminal coercion.

(a) An Indian is guilty of criminal coercion if, with purpose unlawfully to restrict another's freedom of action to his or her detriment, he or she threatens to:

(1) Commit any criminal offense; or

(2) Accuse anyone of a criminal offense; or

(3) Expose any secret tending to subject any person to hatred, contempt or ridicule, or to impair his or her business repute; or

(4) Take or withhold action as an official, or cause an official to take or withhold action.

(b) Criminal coercion is classified as a misdemeanor.

§ 11.42 Sexual assault.

(a) An Indian who has sexual contact with another person not the his or her spouse, or causes such other person to have sexual contact with him or her, is guilty of sexual assault, a misdemeanor, if:

(1) He or she knows that the conduct is offensive to the other person; or

(2) He or she knows that the other person suffers from a mental disease or defect which renders him or her incapable of appraising the nature of his or her conduct; or

(3) He or she knows that the other person is unaware that a sexual act is being committed; or

(4) The other person is less than ten years old; or

(5) He or she has substantially impaired the other person's power to appraise or control his or her conduct, by administering or employing without the other's knowledge drugs, intoxicants or other means for the purpose of preventing resistance; or

(6) The other person is less than 16 years old and the actor is at least four years older than the other person; or

(7) The other person is less than 21 years old and the actor is his or her guardian or otherwise responsible for general supervision of his or her welfare; or

(8) The other person is in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over him or her.

(b) Sexual contact is any touching of the sexual or other intimate parts of the person for the purpose of arousing or gratifying sexual desire.

§ 11.43 Indecent exposure.

An Indian commits a misdemeanor if, for the purpose of arousing or gratifying sexual desire of himself or herself or of any other person other than his or her spouse, he or she exposes his or her genitals under circumstances in which he or she knows his or her conduct is likely to cause affront or alarm.

§ 11.44 Reckless burning or exploding.

An Indian commits a misdemeanor if he or she purposely starts a fire or causes an explosion, whether on his or her property or another's, and thereby recklessly:

(a) Places another person in danger of death or bodily injury; or

(b) Places a building or occupied structure of another in danger of damage or destruction.

§ 11.45 Criminal mischief.

(a) An Indian is guilty of criminal mischief if he or she:

(1) Damages tangible property of another purposely, recklessly, or by negligence in the employment of fire, explosives, or other dangerous means; or

(2) Purposely or recklessly tampers with tangible property of another so as to endanger person or property; or

(3) Purposely or recklessly causes another to suffer pecuniary loss by deception or threat.

(b) Criminal mischief is a misdemeanor if the actor purposely causes pecuniary loss in excess of \$100, or a petty misdemeanor if he or she purposely or recklessly causes pecuniary loss in excess of \$25. Otherwise, criminal mischief is a violation.

§ 11.46 Criminal trespass.

(a) An Indian commits an offense if, knowing that he or she is not licensed or privileged to do so, he or she enters or surreptitiously remains in any building or occupied structure. An offense under this subsection is a misdemeanor if it is committed in a dwelling at night. Otherwise it is a petty misdemeanor.

(b) An Indian commits an offense if, knowing that he or she is not licensed or privileged to do so, he or she enters or remains in any place as to which notice against trespass is given by:

(1) Actual communication to the actor; or

(2) Posting in a manner prescribed by law or reasonably likely to come to the attention of intruders; or

(3) Fencing or other enclosure manifestly designed to exclude intruders.

(c) An offense under this section constitutes a petty misdemeanor if the offender defies an order to leave personally communicated to him or her by the owner of the premises or other authorized person. Otherwise it is a violation.

§ 11.47 Theft.

An Indian who, without permission of the owner, shall take, shoplift, possess or exercise unlawful control over moveable property not his or her own or under his or her control with the purpose to deprive the owner thereof or who unlawfully transfers immovable property of another or any interest therein with the purpose to benefit himself or herself or another not entitled thereto shall be guilty of theft, a misdemeanor.

§ 11.48 Receiving stolen property.

An Indian is guilty of receiving stolen property, a misdemeanor, if he or she purposely receives, retains, or disposes of movable property of another knowing that it has been stolen, or believing that it has probably been stolen, unless the property is received, retained, or disposed with purpose to restore it to the owner. "Receiving" means acquiring possession, control or title, or lending on the security of the property.

§ 11.49 Embezzlement.

An Indian who shall, having lawful custody of property not his or her own, appropriate the same to his or her own use, with intent to deprive the owner thereof, shall be guilty of embezzlement, a misdemeanor.

§ 11.50 Fraud.

An Indian who shall by willful misrepresentation or deceit, or by false interpreting, or by the use of false weights or measures obtain any money or other property, shall be guilty of fraud, a misdemeanor.

§ 11.51 Forgery.

(a) An Indian is guilty of forgery, a misdemeanor, if, with purpose to defraud or injure anyone, or with knowledge that he or she is facilitating fraud or injury to be perpetrated by anyone, he or she:

(1) Alters, makes, completes, authenticates, issues or transfers any writing of another without his or her authority; or

(2) Utters any writing which he or she knows to be forged in a manner above specified.

(b) "Writing" includes printing or any other method of recording information, money, coins, tokens, stamps, seals, credit cards, badges, trademarks, and other symbols of value, right, privilege, or identification.

§ 11.52 Extortion.

An Indian who shall willfully, by making false charges against another person or by any other means whatsoever, extort or attempt to extort any moneys, goods, property, or anything else of any value, shall be guilty of extortion, a misdemeanor.

§ 11.53 Misbranding.

An Indian who shall knowingly and willfully misbrand or alter any brand or mark on any livestock of another person, shall be guilty of a misdemeanor.

§ 11.54 Unauthorized use of automobiles and other vehicles.

An Indian commits a misdemeanor if he or she operates another person's

automobile, airplane, motorcycle, motorboat, or other motor-propelled vehicle without consent of the owner. It is an affirmative defense to prosecution under this section that the actor reasonably believed that the owner would have consented to the operation had he known of it.

§ 11.55 Tampering with records.

An Indian commits a misdemeanor if, knowing that he or she has no privilege to do so, he or she falsifies, destroys, removes or conceals any writing or record, with purpose to deceive or injure anyone or to conceal any wrongdoing.

§ 11.56 Bad checks.

(a) An Indian who issues or passes a check or similar sight order for the payment of money, knowing that it will not be honored by the drawee, commits a misdemeanor.

(b) For the purposes of this section, an issuer is presumed to know that the check or order would not be paid, if:

(1) The issuer had no account with the drawee at the time the check or order was issued; or

(2) Payment was refused by the drawee for lack of funds, upon presentation within 30 days after issue, and the issuer failed to make good within 10 days after receiving notice of that refusal.

§ 11.57 Unauthorized use of credit cards.

(a) An Indian commits a misdemeanor if he or she uses a credit card for the purpose of obtaining property or services with knowledge that:

(1) The card is stolen or forged; or

(2) The card has been revoked or cancelled; or

(3) For any other reason his or her use of the card is unauthorized by the issuer.

(b) "Credit card" means a writing or other evidence of an undertaking to pay for property or services delivered or rendered to or upon the order of a designated person or bearer.

§ 11.58 Defrauding secured creditors.

An Indian commits a misdemeanor if he or she destroys, removes, conceals, encumbers, transfers or otherwise deals with property subject to a security interest with purpose to hinder that interest.

§ 11.59 Endangering welfare of children.

An Indian parent, guardian, or other person supervising the welfare of a child under 18 commits a misdemeanor if he or she knowingly endangers the child welfare by violating a duty of care, protection or support.

§ 11.60 Persistent non-support.

An Indian commits a misdemeanor if he or she persistently fails to provide support which he or she can provide and which he or she knows he or she is legally obliged to provide to a spouse, child or other dependent.

§ 11.61 Bribery.

(a) An Indian is guilty of bribery, a misdemeanor, if he or she offers, confers or agrees to confer upon another, or solicits, accepts or agrees to accept from another:

(1) Any pecuniary benefit as consideration for the recipient's decision, opinion, recommendation, vote or other exercise of discretion as a public servant, party official or voter; or

(2) Any benefit as consideration for the recipient's decision, vote, recommendation or other exercise of official discretion in a judicial or administrative proceeding; or

(3) Any benefit as consideration for a violation of a known legal duty as public servant or party official.

(b) It is no defense to prosecution under this section that a person whom the actor sought to influence was not qualified to act in the desired way, whether he had not yet assumed office, or lacked jurisdiction, or for any other reason.

§ 11.62 Threats and other improper influence in official and political matters.

(a) An Indian commits a misdemeanor if he or she:

(1) Threatens unlawful harm to any person with purpose to influence his or her decision, vote or other exercise of discretion as a public servant, party official or voter; or

(2) Threatens harm to any public servant with purpose to influence his decision, opinion, recommendation, vote or other exercise of discretion in a judicial or administrative proceeding; or

(3) Threatens harm to any public servant or party official with purpose to influence him or her to violate his or her known legal duty.

(b) It is no defense to prosecution under this section that a person whom the actor sought to influence was not qualified to act in the desired way, whether because he or she had not yet assumed office, or lacked jurisdiction, or for any other reason.

§ 11.63 Retaliation for past official action.

An Indian commits a misdemeanor if he or she harms another by any unlawful act in retaliation for anything lawfully done by the latter in the capacity of public servant.

§ 11.64 Perjury.

(a) An Indian is guilty of perjury, a misdemeanor, if in any official proceeding he or she makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of a statement previously made, when the statement is material and he or she does not believe it to be true.

(b) No Indian shall be guilty of an offense under this section if he or she retracted the falsification in the course of the proceeding in which it was made before it became manifest that the falsification was or would be exposed and before the falsification substantially affected the proceeding.

(c) No Indian shall be convicted of an offense under this section where proof of falsity rests solely upon contradiction by testimony of a single person other than the defendant.

§ 11.65 False alarms.

An Indian who knowingly causes a false alarm of fire or other emergency to be transmitted to or within an organization, official or volunteer, for dealing with emergencies involving danger to life or property commits a misdemeanor.

§ 11.66 False reports.

(a) An Indian who knowingly gives false information to any law enforcement officer with the purpose to implicate another commits a misdemeanor.

(b) An Indian commits a petty misdemeanor if he or she:

(1) Reports to law enforcement authorities an offense or other incident within their concern knowing that it did not occur; or

(2) Pretends to furnish such authorities with information relating to an offense or incident when he or she knows he or she has no information relating to such offense or incident.

§ 11.67 Impersonating a public servant.

An Indian commits a misdemeanor if he or she falsely pretends to hold a position in the public service with purpose to induce another to submit to such pretended official authority or otherwise to act in reliance upon that pretense to his or her prejudice.

§ 11.68 Disobedience to lawful order of court.

An Indian who willfully disobeys any order, subpoena, summons, warrant or command duly issued, made or given by any court of Indian offenses or any officer thereof is guilty of a misdemeanor.

§ 11.69 Resisting arrest.

An Indian commits a misdemeanor if, for the purpose of preventing a public servant from effecting a lawful arrest or discharging any other duty, he or she creates a substantial risk of bodily injury to the public servant or anyone else, or employs means justifying or requiring substantial force to overcome the resistance.

§ 11.70 Obstructing justice.

An Indian commits a misdemeanor if, with purpose to hinder the apprehension, prosecution, conviction or punishment of another for a crime, he or she harbors or conceals the other, provides a weapon, transportation, disguise or other means of escape, warns the other of impending discovery, or volunteers false information to a law enforcement officer.

§ 11.71 Escape.

An Indian is guilty of the offense of escape, a misdemeanor, if he or she unlawfully removes himself or herself from official detention or fails to return to official detention following temporary leave granted for a specific purpose or limited period.

§ 11.72 Bail jumping.

An Indian set at liberty by court order, with or without bail, upon condition that he or she will subsequently appear at a specified time or place, commits a misdemeanor if, without lawful excuse, he or she fails to appear at that time and place.

§ 121.73 Flight to avoid prosecution or judicial process.

An Indian who shall absent himself or herself from the Indian country over which the court of Indian offenses exercises jurisdiction for the purpose of avoiding arrest, prosecution or other judicial process shall be guilty of a misdemeanor.

§ 11.74 Witness tampering.

(a) An Indian commits a misdemeanor if, believing that an official proceeding or investigation is pending or about to be instituted, he or she attempts to induce or otherwise cause a witness or informant to:

- (1) Testify or inform falsely; or
- (2) Withhold any testimony, information, document or thing; or
- (3) Elude legal process summoning him or her to supply evidence; or
- (4) Absent himself or herself from any proceeding or investigation to which he or she has been legally summoned.

(b) An Indian commits a misdemeanor if he or she harms another by any unlawful act in retaliation for anything

lawfully done in the capacity of witness or informant.

§ 11.75 Tampering with or fabricating physical evidence.

An Indian commits a misdemeanor if, believing that an official proceeding or investigation is pending or about to be instituted, he or she:

(a) Alters, destroys, conceals, or removes any record, document or thing with purpose to impair its verity or availability in such proceeding or investigation; or

(b) Makes, presents or uses any record, document or thing knowing it to be false and with the purpose to mislead a public servant who is or may be engaged in such proceeding or investigation.

§ 11.76 Disorderly conduct.

(a) An Indian is guilty of disorderly conduct if, with purpose to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he or she:

(1) Engages in fighting or threatening, or in violent or tumultuous behavior; or

(2) Makes unreasonable noise or offensively coarse utterance, gesture or display, or addresses abusive language to any person present; or

(3) Creates a hazardous or physically offensive condition by any act which serves no legitimate purposes of the actor.

(b) "Public" means affecting or likely to affect persons in a place to which the public has access; among the places included are highways, schools, prisons, apartments, places of business or amusement, or any neighborhood.

(c) An offense under this section is a petty misdemeanor if the actor's purpose is to cause substantial harm or serious inconvenience, or if he or she persists in disorderly conduct after reasonable warning or request to desist. Otherwise disorderly conduct is a violation.

§ 11.77 Riot; Failure to disperse.

(a) An Indian is guilty of riot, a misdemeanor, if he or she participates with two or more others in a course of disorderly conduct:

(1) With purpose to commit or facilitate the commission of a felony or misdemeanor; or

(2) With purpose to prevent of coerce official action; or

(3) When the actor or any other participant to the knowledge of the actor uses or plans to use a firearm or other deadly weapon.

(b) Where three or more Indians are participating in a course of disorderly conduct likely to cause substantial harm

or serious inconvenience, a law enforcement officer may order the participants and others in the immediate vicinity to disperse. An Indian who refuses or knowingly fails to obey such an order commits a misdemeanor.

§ 11.78 Harassment.

An Indian commits a petty misdemeanor if, with purpose to harass another, he or she:

- (a) Makes a telephone call without purpose or legitimate communication; or
- (b) Insults, taunts or challenges another in a manner likely to provoke violent or disorderly response; or
- (c) Makes repeated communications anonymously or at extremely inconvenient hours, or in offensively coarse language; or
- (d) Subjects another to an offensive touching; or
- (e) Engages in any other course of alarming conduct serving no legitimate purpose.

§ 11.79 Carrying concealed weapons.

An Indian who goes about in public places armed with a dangerous weapon concealed upon his or her person is guilty of a misdemeanor unless he or she has a permit to do so signed by a magistrate of the court of Indian offenses.

§ 11.80 Reckless driving.

(a) An Indian who shall operate any vehicle in a manner dangerous to the public safety is guilty of reckless driving.

(b) An offense committed under this section is a petty misdemeanor, unless it is committed while under the influence of alcohol, in which case it is a misdemeanor.

§ 11.81 Cruelty to animals.

An Indian commits a misdemeanor if he or she purposely or recklessly:

- (a) Subjects any animal in his custody to cruel neglect; or
- (b) Subjects any animal to cruel mistreatment; or
- (c) Kills or injures any animal belonging to another without legal privilege or consent of the owner.

§ 11.82 Maintaining a public nuisance.

An Indian who permits his or her property to fall into such condition as to injure or endanger the safety, health, comfort, or property of his or her neighbors, is guilty of a violation.

§ 11.83 Abuse of office.

An Indian acting or purporting to act in an official capacity or taking advantage of such actual or purported capacity commits a misdemeanor if,

knowing that his or her conduct is illegal, he or she:

- (a) Subjects another to arrest, detention, search, seizure, mistreatment, dispossession, assessment, lien or other infringement of personal or property rights; or
- (b) Denies or impedes another in the exercise or enjoyment of any right, privilege, power or immunity.

§ 11.84 Violation of an approved tribal ordinance.

An Indian who violates the terms of any tribal ordinance duly enacted by the governing body of the tribe occupying the Indian country under the jurisdiction of the court of Indian offenses is guilty of an offense and upon conviction thereof shall be sentenced as provided in the ordinance.

§ 11.85 Maximum fines and sentences of imprisonment.

(a) An Indian convicted of an offense under this code may be sentenced as follows:

- (1) If the offense is a misdemeanor, to a term of imprisonment not to exceed 6 months and to a fine not to exceed \$500.00;
 - (2) If the offense is a petty misdemeanor, to a term of imprisonment not to exceed 3 months, and to a fine not to exceed \$250.00;
 - (3) If the offense is a violation, to a term of imprisonment not to exceed one month and to a fine not to exceed \$100.00.
- (b) The fines listed above may be imposed in addition to any amounts ordered paid as restitution.

Subpart E—Civil Actions

§ 11.86 Law applicable to civil actions.

(a) In all civil cases the court of Indian offenses shall apply any laws of the United States that may be applicable, any authorized regulations of the Interior Department, and any ordinances or customs of the tribe occupying the area of Indian country over which the court has jurisdiction, not prohibited by Federal laws.

(b) Where any doubt arises as to the customs and usages of the tribe the court may request the advice of counselors familiar with these customs and usages.

(c) Any matters that are not covered by the traditional customs and usages of the tribe, or by applicable Federal laws and regulations, shall be decided by the court of Indian offenses according to the law of the State in which the matter in dispute lies.

§ 11.87 Judgments in civil actions.

(a) In all civil cases, judgment shall consist of an order of the court awarding money damages to be paid to the injured party, or directing the surrender of certain property to the injured party, or the performance of some other act for the benefit of the injured party, including injunctive relief and declaratory judgments.

(b) Where the injury inflicted was the result of carelessness of the defendant, the judgment shall fairly compensate the injured party for the loss he or she has suffered.

(c) Where the injury was deliberately inflicted, the judgment shall impose an additional penalty upon the defendant, which additional penalty may run either in favor of the injured party or in favor of the tribe.

(d) Where the injury was inflicted as a result of accident, or where both the complainant and the defendant were at fault, the judgment shall compensate the injured party for a reasonable part of the loss he or she has suffered.

(e) No judgment shall be given on any suit unless the defendant has actually received notice of such suit and ample opportunity to appear in court in his or her defense.

§ 11.88 Costs in civil actions.

(a) The court may assess the accruing costs of the case against the party or parties against whom judgment is given. Such costs shall consist of the expenses of voluntary witnesses for which either party may be responsible and the fees of jurors in those cases where a jury trial is had, and any further incidental expenses connected with the procedure before the court as the court may direct.

(b) In all civil suits the complainant may be required to deposit with the clerk of the court a fee or other security in a reasonable amount to cover costs and disbursements in the case.

§ 11.89 Applicable civil procedure.

The procedure to be followed in civil cases shall be the Federal Rules of Civil Procedure applicable to United States district courts, except insofar as such procedures are superseded by order of the court of Indian offenses or by the existence of inconsistent tribal form of procedure.

§ 11.90 Applicable rules of evidence.

The chief magistrate shall determine which rules of evidence are applicable. Courts of Indian offenses shall not be bound by common law rules of evidence, or the rules of evidence applicable in state or Federal courts.

Subpart F—Domestic Relations**§ 11.91 Marriages.**

(a) A magistrate of the court of Indian offenses shall have the authority to perform marriages.

(b) A valid marriage shall be constituted by:

(1) The issuance of a marriage license by the court of Indian offenses and by execution of a consent to marriage by both parties to the marriage and recorded with the clerk of court; or

(2) The recording of a tribal custom marriage with the court of Indian offenses within five days of the tribal custom marriage ceremony by the signing by both parties of a marriage register maintained by the clerk of court.

(c) A marriage license application shall include the following information:

(1) Name, sex, occupation, address, social security number, and date and place of birth of each party to the proposed marriage;

(2) If either party was previously married, his or her name, and the date, place, and court in which the marriage was dissolved or declared invalid or the date and place of death of the former spouse;

(3) Name and address of the parents or guardian of each party;

(4) Whether the parties are related to each other and, if so, their relationship; and

(5) The name and date of birth of any child of which both parties are parents, born before the making of the application, unless their parental rights and the parent and child relationship with respect to the child have been terminated.

(6) A certificate of the results of any medical examination required by the laws of the State in which the Indian country under the jurisdiction of the court of Indian offenses is located.

§ 11.92 Marriage licenses.

A marriage license shall be issued by the clerk of court in the absence of any showing that the proposed marriage would be invalid under any provision of this part or tribal custom, and upon written application of an unmarried male and unmarried female, both of whom must be eighteen (18) years or older. If either party to the marriage is under the age of eighteen (18), that party must have the written consent of parent or legal guardian.

§ 11.93 Solemnization.

(a) In the event a judge, clergyman, tribal official or anyone authorized to do so solemnizes a marriage, he or she shall file with the clerk of court certification thereof within thirty (30) days of the

solemnization. The validity of any marriage is not affected by the absence of any ceremony, but is affected by the lack of recordation.

(b) Upon receipt of the marriage certificate, the clerk of court shall register the marriage.

§ 11.94 Invalid or prohibited marriages.

(a) The following marriages are prohibited:

(1) A marriage entered into prior to the dissolution of an earlier marriage of one of the parties;

(2) A marriage between an ancestor and a descendant, or between a brother and a sister, whether the relationship is by the half or the whole blood, or by adoption;

(3) A marriage between an aunt and a nephew or between an uncle and a niece, whether the relationship is by the half or the whole blood, except as to marriages permitted by established tribal custom; and

(4) A marriage prohibited by custom and usage of the tribe.

(b) Children born of a prohibited marriage are legitimate.

§ 11.95 Declaration of invalidity.

(a) The court of Indian offenses shall enter a decree declaring the invalidity entered into under the following circumstances:

(1) A party lacked capacity to consent to the marriage, either because of mental incapacity or infirmity or by the influence of alcohol, drugs, or other incapacitating substances; or

(2) A party was induced to enter into a marriage by fraud or duress; or

(3) A party lacks the physical capacity to consummate the marriage by sexual intercourse and at the time the marriage was entered into, the other party did not know of the incapacity; or

(4) The marriage is prohibited under section 11.94.

(b) A declaration of invalidity may be sought by either party to the marriage or by the legal representative of the party who lacked capacity to consent.

§ 11.96 Dissolution.

(a) The court of Indian offenses shall enter a decree of dissolution of marriage if:

(1) The court finds that the marriage is irretrievably broken, if the finding is supported by evidence that (i) the parties have lived separate and apart for a period of more than 180 days next preceding the commencement of the proceeding, or (ii) there is serious marital discord adversely affecting the attitude of one or both of the parties towards the marriage;

(2) The court finds that either party, at the time the action was commenced, was domiciled within the Indian country under the jurisdiction of the court, and that the domicile has been maintained for 90 days next preceding the making of the findings;

(3) To the extent it has jurisdiction to do so, the court has considered, approved, or provided for child custody, the support of any child entitled to support, the maintenance of either spouse, and the disposition of property; or has provided for a separate later hearing to complete these matters.

(b) If a party requests a decree of legal separation rather than a decree of dissolution of marriage, the court of Indian offenses shall grant the decree in that form unless the other party objects.

§ 11.97 Dissolution proceedings.

(a) Either or both parties to the marriage may initiate dissolution proceedings.

(b) If a proceeding is commenced by one of the parties, the other party shall be served in the manner provided by the applicable rules of civil procedure and within thirty days after the date of service may file a verified response.

(c) The verified petition in a proceeding for dissolution of marriage or legal separation shall allege that the marriage is irretrievably broken and shall set forth:

(1) The age, occupation, and length of residence within the Indian country under the jurisdiction of the court of each party;

(2) The date of the marriage and the place at which it was registered;

(3) That jurisdictional requirements are met and that the marriage is irretrievably broken in that either (i) the parties have lived separate and apart for a period of more than 180 days next preceding the commencement of the proceeding or (ii) there is a serious marital discord adversely affecting the attitude of one or both of the parties toward the marriage, and there is no reasonable prospect of reconciliation;

(4) The names, ages, and addresses of all living children of the marriage and whether the wife is pregnant;

(5) Any arrangement as to support, custody, and visitation of the children and maintenance of a spouse; and

(6) The relief sought.

§ 11.98 Temporary orders and temporary injunctions.

(a) In a proceeding for dissolution of marriage or for legal separation, either party may move for temporary maintenance or temporary support of a child of the marriage entitled to support.

The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested.

(b) As a part of a motion for temporary maintenance or support or by independent motion accompanied by affidavit, either party may request the court of Indian offenses to issue a temporary injunction for any of the following relief:

(1) Restraining any person from transferring, encumbering, concealing, or otherwise disposing of any property except in the usual course of business or for the necessities of life, and, if so restrained, requiring him or her to notify the moving party of any proposed extraordinary expenditures made after the order is issued;

(2) Enjoining a party from molesting or disturbing the peace of the other party or of any child;

(3) Excluding a party from the family home or from the home of the other party upon a showing that physical or emotional harm would otherwise result;

(4) Enjoining a party from removing a child from the jurisdiction of the court; and

(5) Providing other injunctive relief proper in the circumstances.

(c) The court may issue a temporary restraining order without requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that irreparable injury will result to the moving party if no order is issued until the time for responding has elapsed.

(d) A response may be filed within 20 days after service of notice of motion or at the time specified in the temporary restraining order.

(e) On the basis of the showing made, the court of Indian offenses may issue a temporary injunction and an order for temporary maintenance or support in amounts and on terms just and proper under the circumstances.

(f) A temporary order or temporary injunction:

(1) Does not prejudice the rights of the parties or the child which are to be adjudicated at subsequent hearings in a proceeding;

(2) May be revoked or modified before final decree as deemed necessary by the court;

(3) Terminates when the final decree is entered or when the petition for dissolution or legal separation is voluntarily dismissed.

§ 11.99 Final decree; disposition of property; maintenance; child support; custody.

(a) A decree of dissolution of marriage or of legal separation is final when entered, subject to the right of appeal.

(b) The court of Indian offenses shall have the power to impose judgment as follows in dissolution or separation proceedings:

(1) Apportion or assign between the parties the property and assets belonging to either or both and whenever acquired, and whether the title thereto is the name of the husband or wife or both.

(2) Grant a maintenance order for either spouse in amounts and for periods of time the court deems just;

(3) Order either or both parents owing a duty of support to a child to pay an amount reasonable or necessary for his or her support, without regard to marital misconduct, after considering all relevant factors.

(4) Make child custody determinations in accordance with the best interest of the child.

(5) Restore the maiden name of the wife.

§ 11.100 Determination of paternity and support.

The court of Indian offenses shall have jurisdiction of all suits brought to determine the paternity of a child and to obtain a judgment for the support of the child. A judgment of the court establishing the identity of the father of the child shall be conclusive of that fact in all subsequent determinations of inheritance by the court of Indian offenses or by the Department of the Interior.

§ 11.101 Appointment of guardians.

The court shall have the jurisdiction to appoint or remove legal guardians for minors and for persons who are incapable of managing their own affairs under terms and conditions to be prescribed by the court.

§ 11.102 Change of name.

The court of Indian offenses shall have the authority to change the name of any Indian upon petition of such Indian or upon the petition of the parents of any minor, if at least one parent is Indian. Any order issued by the court for a change of name shall be kept as a permanent record and copies shall be filed with the agency superintendent, the governing body of the tribe occupying the Indian country under the jurisdiction of the court, and any appropriate agency of the State in which the court is located.

Subpart G—Probate Proceedings

§ 11.103 Probate jurisdiction.

The court of Indian offenses shall have jurisdiction to administer in probate the estate of a deceased Indian who, at the time of his or her death, was domiciled or owned real or personal property situated within the Indian country under the jurisdiction of the court to the extent that such estate consists of property which does not come within the jurisdiction of the Secretary of the Interior.

§ 11.104 Duty to present will for probate.

Any custodian of a will shall deliver the same to the court of Indian offenses within 30 days after receipt of information that the maker thereof is deceased. Any custodian who fails to do so shall be liable for damages sustained by any person injured thereby.

§ 11.105 Proving and admitting will.

(a) Upon initiating the probate of an estate, the will of the decedent shall be filed with the court. Such will may be proven and admitted to probate by filing an affidavit of an attesting witness which identifies such will as being the will which the decedent executed and declared to be his or her last will. If the evidence of none of the attesting witnesses is available, the court may allow proof of the will by testimony that the signature of the testator is genuine.

(b) At any time within 90 days after a will has been admitted to probate, any person having an interest in the decedent's estate may contest the validity of such will. In the event of such contest, a hearing shall be held to determine the validity of such will.

(c) Upon considering all relevant information concerning the will, the court of Indian offenses shall enter an order affirming the admission of such will to probate, or rejecting such will and ordering that the probate of the decedent's estate proceed as if the decedent had died intestate.

§ 11.106 Petition and order to probate estate.

(a) Any person having an interest in the administration of an estate which is subject to the jurisdiction of the court may file a written petition with the court requesting that such estate be administered in probate.

(b) The court of Indian offenses shall enter an order directing that the estate be probated upon finding that the decedent was an Indian who, at the time of his or her death, was domiciled or owned real or personal property situated within the Indian country under the jurisdiction of the court other than

trust or other restricted property, that the decedent left an estate subject to the jurisdiction of the court, and that it is necessary to probate such estate.

§ 11.107 Appointment and duties of executor or administrator.

(a) Upon ordering the estate to be probated, the court shall appoint an administrator to administer the estate of the decedent. The person nominated by the decedent's will, if any, to be the executor of the estate shall be so appointed, provided such person is willing to serve in such capacity.

(b) The executor or administrator appointed by the court shall have the following duties and powers during the administration of the estate and until discharged by the court:

(1) To send by certified mail true copies of the order to probate the estate and the will of the decedent admitted to probate by such order, if any, to each heir, devisee and legatee of the decedent, at their last known address, to the governing body of the tribe or tribes occupying the Indian country over which the court has jurisdiction, and to the agency superintendent;

(2) To preserve and protect the decedent's property within the estate and the heirs, so far as is possible;

(3) To investigate promptly all claims against the decedent's estate and determine their validity;

(4) To cause a written inventory of all the decedent's property within the estate to be prepared promptly with each article or item being separately set forth and cause such property to be exhibited to and appraised by an appraiser, and the inventory and appraisal thereof to be filed with the court;

(5) To give promptly all persons entitled thereto such notice as is required under these proceedings;

(6) To account for all property within the estate which may come into his or her possession or control, and to maintain accurate records of all income received and disbursements made during the course of the administration.

§ 11.108 Removal of executor or administrator.

The court of Indian offenses may order the executor or administrator to show cause why he or she should not be discharged, and may discharge the executor or administrator for failure, neglect or improper performance of his or her duties.

§ 11.109 Appointment and duties of appraiser.

(a) Upon ordering an estate to be probated, the court shall appoint a disinterested and competent person as

an appraiser to appraise all of the decedent's real and personal property within the estate.

(b) It shall be the duty of the appraiser to appraise separately the true cash value of each article or item of property within the estate, including debts due the decedent, and to indicate the appraised value of each such article or item of property set forth in the inventory of the estate and to certify such appraisal by subscribing his or her name to the inventory and appraisal.

§ 11.110 Claims against the estate.

(a) Creditors of the estate or those having a claim against the decedent shall file their claim with the clerk of court or with the executor or administrator within 60 days from official notice of the appointment of the executor or administrator published locally in the press or posting of signs at the tribal and agency offices, giving appropriate notice for the filing of claims.

(b) The executor or administrator shall examine all claims within 90 days of his or her appointment and notify the claimant whether his or her claim is accepted or rejected. If the claimant is notified of rejection, he or she may request a hearing before the court by filing a petition requesting such hearing within 30 days following the notice of rejection.

§ 11.111 Sale of property.

After filing the inventory and appraisal, the executor or administrator may petition the court for authority to sell personal property of the estate for purposes of paying expenses of last illness and burial expenses, expenses of administration, claims, if any, against the estate, and for the purpose of distribution. If, in the court's judgment, such sale is in the best interest of the estate, the court shall order such sale and prescribe the terms upon which the property shall be sold.

§ 11.112 Final account.

When the affairs of an estate have been fully administered, the executor or administrator shall file a final account with the court, verified by his or her oath. Such final account shall affirmatively set forth:

(a) That all claims against the estate have been paid, except as shown; and that the estate has adequate unexpended and unappropriated funds to fully pay such remaining claims;

(b) The amount of money received and expended by him or her, from whom received and to whom paid, referring to the vouchers for each of such payments;

(c) That there is nothing further to be done in the administration of the estate except as shown in the final account;

(d) The remaining assets of the estate, including unexpended and unappropriated money, at the time of filing the final account;

(e) The proposed determination of heirs and indicate the names, ages, addresses and relationship to the decedent of each distributee and the proposed distributive share and value thereof each heir, devisee or legatee is to receive;

(f) A petition that the court set a date for conducting a hearing to approve the final account, to determine the heirs, devisees and legatees of the decedent and the distributive share each distributee is to receive.

§ 11.113 Determination of the court.

At the time set for hearing upon the final account, the court of Indian offenses shall proceed to examine all evidence relating to the distribution of the decedent's estate, and consider objections to the final account which may have been filed by any heir, devisee, legatee, or other person having an interest in the distribution of the estate. Upon conclusion of the hearing, the court shall enter an order:

(a) Providing for payment of approved claims;

(b) Determining the decedent's heirs, devisees and legatees, indicating the names, ages and addresses of each, and the distributive share of the remaining estate which each distributee is to receive;

(c) Directing the administrator or executor to distribute such distributive share to those entitled thereto.

§ 11.114 Descent and distribution.

(a) The court shall distribute the estate according to the terms of the will of the decedent which has been admitted to probate.

(b) If the decedent died intestate or having left a will which has been rejected by the court, the estate shall be distributed as follows:

(1) According to the laws and customs of the tribe if such laws and customs are proved; or

(2) According to state law absent the existence of tribal laws or customs.

(c) If no person takes under the above subsections, the estate shall escheat to the tribe.

§ 11.115 Closing estate.

(a) Upon finding that the estate has been fully administered and is in a condition to be closed, the court shall enter an order closing the estate and

discharging the executor or administrator.

(b) If an order closing the estate has not been entered by the end of nine months following appointment of executor or administrator, the executor or administrator shall file a written report with the court stating the reasons why the estate has not been closed.

§ 11.116 Small estates.

An estate having an appraised value which does not exceed \$2,000,000 and which is to be inherited by a surviving spouse and/or minor children of the deceased may, upon petition of the executor or administrator, and a hearing before the court, be distributed without administration to those entitled thereto, upon which the estate shall be closed.

Subpart H—Appellate Proceedings

§ 11.117 Jurisdiction of appellate division.

The jurisdiction of the appellate division shall extend to all appeals from final orders and judgments of the trial division, by any party except the prosecution in a criminal case where there has been a jury verdict. The appellate division shall review *de novo* all determinations of the trial division on matters of law, but still not set aside any factual determinations of the trial division if such determinations are supported by substantial evidence.

§ 11.118 Procedure on appeal.

(a) An appeal must be taken within 15 days from the judgment appealed from by filing a written notice of appeal with the clerk of court.

(b) The court shall set the amount of a bond to be filed with the notice of appeal.

(c) The notice of appeal shall specify the party or parties taking the appeal, shall designate the judgment, or party thereof appealed from, and shall contain a short statement of reasons for the appeal. The clerk of court shall mail a copy of the notice of appeal to all parties other than parties taking the appeal.

(d) In civil cases, other parties shall have 15 days to respond to the notice of appeal, after which time the appellate division shall determine whether to allow the appeal to be heard or to dismiss the appeal.

(e) In civil cases, the appellant may request the trial division to stay the judgment pending action on the notice of appeal, and, if the appeal is allowed, either party may request the trial division to grant or stay an injunction pending appeal. The trial division may condition a stay or injunction pending appeal on the depositing of cash or bond

sufficient to cover damages awarded by the court together with interest.

§ 11.119 Judgment against surety.

Any surety to a bond submits himself or herself to the jurisdiction of the court of Indian offenses, and irrevocably appoints the clerk of court as his or her agent upon whom any paper affecting his or her liability on the bond may be served.

§ 11.120 Record on appeal.

Within five days after a notice of appeal is filed, the clerk of court shall certify and file with the appellate division the record of the case.

§ 11.121 Briefs and memoranda.

(a) Within 30 days after the notice of appeal is filed, the appellant may file a written brief in support of his or her appeal. An original and one copy for each appellee shall be filed with the clerk of court who shall mail one copy by registered or certified mail to each appellee.

(b) The appellee shall have 15 days after receipt of the appellant's brief within which to file an answer brief. An original and one copy for each appellant shall be filed with the clerk of court who shall mail one copy, by registered or certified mail, to each appellant.

§ 11.122 Oral argument.

The appellate division shall assign all criminal cases for oral argument. The court may in its discretion assign civil cases for oral argument or may dispose of civil cases on the briefs without argument.

§ 11.123 Rules of court.

The chief magistrate of the appellate division shall prescribe all necessary rules concerning the operation of the appellate division and the time and place of meeting of the court.

Subpart I—Children's Court

§ 11.201 Definitions.

For the purpose of sections pertaining to the children's court:

(a) "Abandon" means the leaving of a minor without communication or failing to support a minor for a period of two years or more with no indication of the parents' willingness to assume the parental role.

(b) "Adult" means a person eighteen (18) years or older.

(c) "Counsel" means an attorney admitted to the bar of a state or the District of Columbia or a lay advocate admitted to practice before the court of Indian offenses.

(d) "Custodian" means one who has physical custody of a minor and who is

providing food, shelter and supervision to the minor.

(e) "Custody" means the power to control the day-to-day activities of the minor.

(f) "Delinquent Act" means an act which, if committed by an adult, would be designated a crime under this part or under an ordinance of the tribe.

(g) "detention" means the placement of a minor in a physically restrictive facility.

(h) "Guardian" means a person other than the minor's parent who is by law responsible for the care of that minor.

(i) "Guardian ad Litem" means a person appointed by the court to represent the minor's interests before the court.

(j) "Juvenile Offender" means a person who commits a delinquent act prior to his or her eighteenth birthday.

(k) "Minor" means:

- (1) A person under 18 years of age,
- (2) a person 18 years of age or older concerning whom proceedings are commenced in the children's court prior to his or her eighteenth birthday, or
- (3) a person 18 years of age or older who is under the continuing jurisdiction of the children's court.

(l) "Minor-in-need-of-care" means a minor who:

(1) Has no parent or guardian available and willing to take care of him or her.

(2) Has suffered or is likely to suffer a physical or emotional injury, inflicted by other than accidental means, which causes or creates a substantial risk of death, disfigurement, impairment of bodily functions or emotional health.

(3) Has not been provided with adequate food, clothing, shelter, medical care, education or supervision by his or her parent, guardian or custodian.

(4) Has been sexually abused, or

(5) Has been committing delinquent acts as a result of parental pressure, guidance or approval.

§ 11.202 The children's court established.

When conducting proceedings under §§ 11.201–11.243 of this part the court of Indian offenses shall be known as the "Children's Court".

§ 11.203 Non-criminal proceedings.

No adjudication upon the status of any minor in the jurisdiction of the children's court shall be deemed criminal or be deemed a conviction of a crime, unless the children's court refers the matter to the court of Indian offenses. Neither the disposition nor evidence given before the children's court shall be admissible as evidence against the child in any proceeding in another court.

§ 11.204 Presenting officer.

(a) The agency superintendent and the chief magistrate of the children's court shall jointly appoint a presenting officer to carry out the duties and responsibilities set forth under §§ 11.201-11.243 of this part. The presenting officer's qualifications shall be the same as the qualifications for the official who acts as prosecutor for the court of Indian offenses. The presenting officer may be the same person who acts as prosecutor in the court of Indian offenses.

(b) The presenting officer shall represent the tribe in all proceedings under §§ 11.201-11.243 of this part.

§ 11.205 Guardian ad litem.

The children's court, under any proceeding authorized by this part, shall appoint, for the purposes of the proceeding, a guardian ad litem for a minor, where the court finds that the minor does not have a natural or adoptive parent, guardian or custodian willing and able to exercise effective guardianship.

§ 11.206 Jurisdiction.

The children's court has exclusive, original jurisdiction of the following proceedings:

(a) Proceedings in which an Indian minor who resides in a community for which the court is established is alleged to be a juvenile offender, unless the children's court transfers jurisdiction to the court of Indian offenses pursuant to § 11.208 of this part.

(b) proceedings in which an Indian minor who resides in a community for which the court is established is alleged to be a minor-in-need-of-care.

§ 11.207 Rights of parties.

(a) In all hearings and proceedings under §§ 11.201-11.243 of this part the following rights will be observed unless modified by the particular section describing a hearing or proceeding:

(1) Notice of the hearing or proceeding shall be given the minor, his or her parents, guardian or custodian and their counsel. The notice shall be delivered by a tribal law enforcement officer or an appointee of the children's court. If the notice cannot be delivered personally, it shall be delivered by registered mail. The notice shall contain:

- (i) The name of the court; and
- (ii) The title of the proceedings; and
- (iii) A brief statement of the substance of the allegations against the minor; and
- (iv) The date, time and place of the proceeding.

(b) The children's court judge shall inform the minor and his or her parents, guardian or custodian of their right to

retain counsel, and, in juvenile delinquency proceedings, by telling them: "You have a right to have a lawyer or other person represent you at this proceeding. If you cannot afford to hire counsel, the court will appoint counsel for you."

(c) The minor need not be a witness against, nor otherwise incriminate, himself or herself.

(d) The children's court shall give the minor, and the minor's parent, guardian or custodian the opportunity to introduce evidence, to be heard on their own behalf and to examine witnesses.

§ 11.208 Transfer to court of Indian offenses.

(a) The presenting officer or the minor may file a petition requesting the children's court to transfer the minor to the court of Indian offenses if the minor is 14 years of age or older and is alleged to have committed an act that would have been considered a crime if committed by an adult.

(b) The children's court shall conduct a hearing to determine whether jurisdiction of the minor should be transferred to the court of Indian offenses.

(1) The transfer hearing shall be held on more than 10 days after the petition is filed.

(2) Written notice of the transfer hearing shall be given to the minor and the minor's parents, guardian or custodian at least 72 hours prior to the hearing.

(c) All the rights listed in § 11.207 shall be afforded the parties at the transfer hearing.

(d) The following factors shall be considered when determining whether to transfer jurisdiction of the minor to the court of Indian offenses:

- (1) The nature and seriousness of the offense with which the minor is charged.
- (2) The nature and condition of the minor, as evidenced by his or her age, mental and physical condition; past record of offenses; and responses to past children's court efforts at rehabilitation.

(e) The children's court may transfer jurisdiction of the minor to the court of Indian offenses if the children's court finds clear and convincing evidence that both of the following circumstances exist:

- (1) There are no reasonable prospects of rehabilitating the minor through resources available to the children's court; and
- (2) The offense allegedly committed by the minor evidences a pattern of conduct which constitutes a substantial danger to the public.

(f) When a minor is transferred to the court of Indian offenses, the children's

court shall issue a written transfer order containing reasons for its order. The transfer order constitutes a final order for purposes of appeal.

§ 11.209 Court records.

(a) A record of all hearings under §§ 11.201-11.243 of this part shall be made and preserved.

(b) All children's court records shall be confidential and shall not be open to inspection to any but the minor, the minor's parents or guardian, the presenting officer, or others by order of the children's court.

§ 11.210 Law enforcement records.

(a) Law enforcement records and files concerning a minor shall be kept separate from the records and files of adults.

(b) All law enforcement records and files shall be confidential and shall not be open to inspection to any but the minor, the minor's parents or guardian, the presenting officer, or others by order of the children's court.

§ 11.211 Expungement.

When a minor who has been the subject of any proceeding before the children's court attains his or her eighteenth birthday, the children's court magistrate shall order the court records and the law enforcement records pertaining to that minor to be destroyed.

§ 11.212 Appeal.

(a) For purposes of appeal, a record of the proceedings shall be made available to the minor and the parents, guardian or custodian. Costs of obtaining the record shall be paid by the party seeking the appeal.

(b) Any party to a children's court hearing may appeal a final order or disposition of the case by filing a written notice of appeal with the children's court within 30 days of the final order of disposition.

(c) No decree or disposition of a hearing shall be stayed by such appeal.

(d) All appeals shall be conducted in accordance with this part.

§ 11.213 Contempt of court.

Any willful disobedience of interference with any order of the children's court constitutes contempt of court which may be punished in accordance with this part.

Juvenile Offender Procedure**§ 11.214 Complaint.**

A complaint must be filed by a law enforcement officer and sworn to by a person who has knowledge of the facts alleged. The complaint shall be signed

by the complaining witness, and shall contain:

(a) A citation to the specific section(s) of this part which gives the children's court jurisdiction of the proceedings; and

(b) A citation to the section(s) of this part which the minor is alleged to have violated; and

(c) The name, age, and address of the minor who is the subject of the complaint, if known; and

(d) A plain and concise statement of the facts upon which the allegations are based, including the date, time, and location at which the alleged facts occurred.

§ 11.215 Warrant.

The children's court may issue a warrant directing that a minor be taken into custody if the court finds there is probable cause to believe the minor committed the delinquent act alleged in the complaint.

§ 11.216 Custody.

A minor may be taken into custody by a law enforcement officer if:

(a) The officer observes the minor committing a delinquent act; or

(b) The officer has reasonable grounds to believe a delinquent act has been committed that would be a crime if committed by an adult, and that the minor has committed the delinquent act; or

(c) A warrant pursuant to § 11.215 has been issued for the minor.

§ 11.217 Law enforcement officer's duties.

A law enforcement officer who takes a minor into custody pursuant to § 11.216 of this part shall:

(a) Give the following warnings to any minor taken into custody prior to any questioning:

(1) The minor has a right to remain silent;

(2) Anything the minor says can be used against the minor in court;

(3) The minor has the right to the presence of counsel during questioning; and

(4) If he or she cannot afford counsel the court will appoint one.

(b) Release the minor to the minor's parent, guardian, or custodian and issue a verbal advice or warning as may be appropriate, unless shelter care or detention is necessary.

(c) If the minor is not released, make immediate and recurring efforts to notify the minor's parents, guardian, or custodian to inform them that the minor has been taken into custody and inform them of their right to be present with the minor until an investigation to determine the need for shelter care or detention is made by the court.

§ 11.218 Detention and shelter care.

(a) A minor alleged to be a juvenile offender may be detained, pending a court hearing, in the following places:

(1) A foster care facility on the reservation approved by the tribe; or

(2) A detention home on the reservation approved by the tribe; or

(3) A private family home on the reservation approved by the tribe.

(b) A minor who is 16 years of age or older may be detained in a jail facility used for the detention of adults only if:

(1) A facility in paragraph (a) of this section is not available or would not assure adequate supervision of the minor; and

(2) The minor is housed in a separate room from the detained adults; and

(3) Adequate supervision is provided 24 hours a day.

§ 11.219 Preliminary inquiry.

(a) If a minor is placed in detention or shelter care, the children's court shall conduct a preliminary inquiry within 24 hours for the purpose of determining:

(1) Whether probable cause exists to believe the minor committed the alleged delinquent act; and

(2) Whether continued detention or shelter care is necessary pending further proceedings.

(b) If a minor has been released to a parent, guardian or custodian, the children's court shall conduct a preliminary inquiry within three days after receipt of the complaint for the sole purpose of determining whether probable cause exists to believe the minor committed the alleged delinquent act.

(c) If the minor's parent, guardian or custodian is not present at the preliminary inquiry, the children's court shall determine what efforts have been made to notify and to obtain the presence of the parents, guardian, or custodian. If it appears that further efforts are likely to produce the parents, guardian or custodian, the children's court shall recess for no more than 24 hours and direct that continued efforts be made to obtain the presence of parents, guardian or custodian.

(d) All the rights listed in § 11.207 shall be afforded the parties in a preliminary inquiry.

(e) The children's court shall hear testimony concerning:

(1) The circumstances that gave rise to the complaint or the taking of the minor into custody; and

(2) The need for detention or shelter care.

(f) If the children's court finds that probable cause exists to believe the minor performed the delinquent act, the minor shall be released to the parents

and ordered to appear at the adjudicatory hearing, unless:

(1) The act is serious enough to warrant continued detention or shelter care; or

(2) There is reasonable cause to believe the minor will run away and be unavailable for further proceedings; or

(3) There is reasonable cause to believe that the minor will commit a serious act causing damage to person or property.

(g) The children's court may release a minor pursuant to paragraph (f) of this section to a relative or other responsible adult tribal member if the parents, guardian, or custodian of the minor consents to the release. If the minor is ten years of age or older, the minor and the parents, guardian or custodian must both consent to the release.

(h) Upon a finding that probable cause exists to believe that the minor has committed the alleged delinquent act and that there is a need for detention or shelter care, the minor's detention or shelter care shall be continued. Otherwise, the complaint shall be dismissed and the minor released.

§ 11.220 Investigation by the presenting officer.

The presenting officer shall make an investigation within 24 hours of a preliminary inquiry or the release of the minor to his or her parents, guardian or custodian to determine whether the interests of the minor and the public require that further action be taken. Upon the basis of this investigation, the children's court may:

(a) Determine that no further action be taken; or

(b) Begin transfer proceedings to the court of Indian offenses pursuant to § 11.208 of this part; or

(c) File a petition pursuant to § 11.221 of this part to initiate further proceedings. The petition shall be filed within 48 hours if the minor is in detention or shelter care. If the minor has been previously released to his or her parents, guardian, custodian, relative or other responsible adult, the petition shall be filed within ten days.

§ 11.221 Petition.

Proceedings under §§ 11.221-11.228 of this part shall be instituted by a petition filed by the presenting officer on behalf of the tribe and in the interests of the minor. The petition shall state:

(a) The name, birthdate, and residence of the minor;

(b) The names and residences of the minor's parents, guardian or custodian;

(c) A citation to the specific section(s) of this part which gives the children's court jurisdiction of the proceedings;

(d) A citation to the section(s) of this part which the minor is alleged to have violated; and

(e) If the minor is in detention or shelter care and the time the minor was taken into custody.

§ 11.222 Date of hearing.

Upon receipt of the petition, the children's court shall set a date for the hearing which shall not be more than ten days after the children's court receives the petition from the presenting officer. If the adjudicatory hearing is not held within ten days after filing of the petition, the petition shall be dismissed and cannot be filed again unless:

(a) The hearing is continued upon motion of the minor; or

(b) The hearing is continued upon motion of the presenting officer by reason by the unavailability of material evidence or witnesses and the children's court finds the presenting officer has exercised due diligence to obtain the material or evidence and reasonable grounds exist to believe that the material or evidence will become available.

§ 11.223 Summons.

(a) At least five days prior to the adjudicatory hearing, the children's court shall issue summons to:

(1) The minor;

(2) The minor's parents, guardian or custodian; and

(3) Any person the children's court or the minor believes necessary for the adjudication of the hearing.

(b) The summons shall contain the name of the court, the title of the proceedings, and the date, time and place of the hearing.

(c) A copy of the petition shall be attached to the summons.

(d) The summons shall be delivered personally by a law enforcement official or appointee of the children's court. If the summons cannot be delivered personally, the court may deliver it by registered mail. If the summons cannot be delivered by registered mail, it may be by publication.

§ 11.224 Adjudicatory hearing.

(a) The children's court shall conduct the adjudicatory hearing for the sole purpose of determining the guilt or innocence of the minor. The hearing shall be private and closed.

(b) All the rights listed in § 11.207 shall be afforded the parties at the adjudicatory hearing. The notice requirements of § 11.207(a) are met by a summons issued pursuant to § 11.223.

(c) If the minor admits the allegations of the petition, the children's court shall proceed to the dispositional state only if the children's court finds that:

(1) The minor fully understands his or her rights as set forth in § 11.207 of this part and fully understands the potential consequences of admitting the allegations;

(2) The minor voluntarily, intelligently and knowingly admits to all facts necessary to constitute a basis for children's court action; and

(3) The minor has not, in the purported admission to the allegations, set forth facts which, if found to be true, constitute a defense to the allegations.

(d) The children's court shall hear testimony concerning the circumstances which gave rise to the complaint.

(e) If the allegations of the petition are sustained by proof beyond a reasonable doubt, the children's court shall find the minor to be a juvenile offender and proceed to the dispositional hearing.

(f) A finding that a minor is a juvenile offender constitutes a final order for purposes of appeal.

§ 11.225 Dispositional hearing.

(a) A dispositional hearing shall take place not more than ten days after the adjudicatory hearing.

(b) At the dispositional hearing, the children's court shall hear evidence on the question of proper disposition.

(c) All the rights listed in § 11.207 shall be afforded the parties in the dispositional hearing.

(d) At the dispositional hearing, the children's court shall consider any predisposition report, physician's report or social study it may have ordered and afford the parents an opportunity to controvert the factual contents and conclusions of the reports. The children's court shall also consider the alternative predisposition report prepared by the minor and his or her attorney, if any.

(e) The dispositional order constitutes a final order for purposes of appeal.

§ 11.226 Dispositional alternatives.

(a) If a minor has been adjudged a juvenile offender, the children's court may make the following disposition:

(1) Place the minor on probation subject to conditions set by the children's court;

(2) Place the minor in an agency or institution designated by the children's court.

(b) The dispositional orders are to be in effect for the time limit set by the children's court, but no order may continue after the minor reaches 18 years of age, unless the dispositional order was made within six months the

of minor's eighteenth birthday or after the minor had reached 18 years of age, in which case the disposition may not continue for more than six months.

(c) The dispositional order is to be reviewed at the children's court discretion, but at least once every 6 months.

§ 11.277 Modification of dispositional order.

(a) A dispositional order of the children's court may be modified upon a showing of change of circumstances.

(b) The children's court may modify a dispositional order at any time upon the motion of the minor or the minor's parents, guardian or custodian.

(c) If the modification involves a change of custody, the children's court shall conduct a hearing pursuant to paragraph (d) of this section.

(d) A hearing to review a dispositional order shall be conducted as follows:

(1) All the rights listed in § 11.207 shall be afforded the parties in the hearing to review a dispositional order. The notice required by paragraph (a) of § 11.207 shall be given at least 48 hours before the hearing.

(2) The children's court shall review the performance of the minor, the minor's parents, guardian or custodian, and other persons providing assistance to the minor and the minor's family.

(3) In determining modification of disposition, the procedures prescribed in § 11.225 of this part shall apply.

(4) If the request for review of disposition is based upon an alleged violation of a court order, the children's court shall not modify its dispositional order unless it finds clear and convincing evidence of the violation.

§ 11.228 Medical examination.

The children's court may order a medical examination for a minor who is alleged to be a juvenile offender.

Minor-in-need-of-care Procedure

§ 11.229 Complaint.

A complaint must be filed by a law enforcement officer and sworn to by a person who has knowledge of the facts alleged. The complaint shall be signed by the complaining witness and shall contain:

(a) A citation to the specific section of this part which gives the children's court jurisdiction of the proceedings;

(b) The name, age and address of the minor who is the subject of the complaint, if known; and

(c) A plain and concise statement of the facts upon which the allegations are based, including the date, time and

location at which the alleged facts occurred.

§ 11.230 Warrant.

The children's court may issue a warrant, directing that a minor be taken into custody if the children's court finds that there is probable cause to believe the minor is a minor-in-need-of-care.

§ 11.231 Custody.

A minor may be taken into custody by a law enforcement officer if:

(a) The officer has reasonable grounds to believe that the minor is a minor-in-need-of-care and that the minor is in immediate danger from his or her surroundings and that removal is necessary; or

(b) A warrant pursuant to § 11.230 of this part has been issued for the minor.

§ 11.232 Law enforcement officer's duties.

Upon taking a minor into custody the officer shall:

(a) Release the minor to the minor's parents, guardian or custodian and issue a verbal advice or warning as may be appropriate, unless shelter care is necessary.

(b) If the minor is not released, make immediate and recurring efforts to notify the minor's parents, guardian or custodian to inform them that the minor has been taken into custody and inform them of their right to be present with the minor until an investigation to determine the need for shelter care is made by the children's court.

§ 11.233 Shelter care.

(a) A minor alleged to be a minor-in-need-of-care may be detained, pending a court hearing, in the following places:

(1) A foster care facility on the reservation approved by the tribe; or

(2) A private family home on the reservation approved by the tribe; or

(3) A shelter care facility on the reservation approved by the tribe.

(b) A minor alleged to be a minor-in-need-of-care may not be detained in a jail or other facility used for the detention of adults. If such minor is detained in a facility used for the detention of juvenile offenders, he or she must be detained in a room separate from juvenile offenders.

§ 11.234 Preliminary inquiry.

(a) If a minor is placed in shelter care, the children's court shall conduct a preliminary inquiry within 24 hours for the purpose of determining:

(1) Whether probable cause exists to believe the minor is a minor-in-need-of-care; and

(2) Whether continued shelter care is necessary pending further proceedings.

(b) If a minor has been released to the parents, guardian or custodian, the children's court shall conduct a preliminary inquiry within three days after receipt of the complaint for the sole purpose of determining whether probable cause exists to believe the minor is a minor-in-need-of-care.

(c) If the minor's parents, guardian or custodian is not present at the preliminary inquiry, the children's court shall determine what efforts have been made to notify an obtain the presence of the parents, guardian or custodian. If it appears that further efforts are likely to produce the parents, guardian or custodian, the children's court shall recess for no more than 24 hours and direct that continued efforts be made to obtain the presence of the parents, guardian or custodian.

(d) All the rights listed in § 11.207 of this part shall be afforded the parties in the minor-in-need-of-care preliminary inquiry except that the court is not required to appoint counsel if the parties cannot afford one. Notice of the inquiry shall be given to the minor, and his or her parents, guardian or custodian and their counsel as soon as the time for the inquiry has been established.

(e) The children's court shall hear testimony concerning:

(1) The circumstances that give rise to the complaint or the taking of the minor into custody; and

(2) The need for shelter care.

(f) If the children's court finds that probable cause exists to believe the minor is a minor-in-need-of-care, the minor shall be released to the parents, guardian or custodian, and ordered to appear at the adjudicatory hearing, unless:

(1) There is reasonable cause to believe that the minor will run away and be unavailable for further proceedings; or

(2) There is reasonable cause to believe that the minor is in immediate danger from the parents, guardian or custodian and that removal from them is necessary; or

(3) There is reasonable cause to believe that the minor will commit a serious act causing damage to person or property.

(g) The children's court may release the minor pursuant to paragraph (f) of this section to a relative or other responsible adult tribal member if the parents, guardian or custodian of the minor consent to the release. If the minor is ten years of age or older, the minor and the parents, guardian or custodian must both consent to the release.

(h) Upon finding that probable cause exists to believe that the minor is a

minor-in-need-of-care and that there is a need for shelter care, the minor's shelter care shall be continued. Otherwise, the complaint shall be dismissed and the minor released.

§ 11.235 Investigation by the presenting officer.

The presenting officer shall make an investigation within 24 hours of the preliminary inquiry or the release of the minor to the parents, guardian or custodian to determine whether the interests of the minor and the public require that further action be taken. Upon the basis of this investigation, the presenting officer may:

(a) Determine that no further action be taken; or

(b) File a petition pursuant to § 11.236 of this part in the children's court to initiate further proceedings. The petition shall be filed within 48 hours if the minor is in shelter care. If the minor has been previously released to the parents, guardian or custodian, relative or responsible adult, the petition shall be filed within ten days.

§ 11.236 Petition.

Proceedings under §§ 11.236-11.243 of this part shall be instituted by a petition filed by the presenting officer on behalf of the tribe and in the interests of the minor. The petition shall state:

(a) The name, birthdate, and residence of the minor;

(b) The names and residences of the minor's parents, guardian or custodian;

(c) A citation to the specific section of this part which give the children's court jurisdiction of the proceedings; and

(d) If the minor is in shelter care, the place of shelter care and the time he or she was taken into custody.

§ 11.237 Date of hearing.

Upon receipt of the minor-in-need-of-care petition, the children's court shall set a date for the hearing which shall not be more than 10 days after the children's court receives the petition from the presenting officer. If the adjudicatory hearing is not held within ten days after the filing of the petition, it shall be dismissed and cannot be filed again, unless:

(a) The hearing is continued upon motion of the minor; or

(b) The hearing is continued upon motion of the presenting officer by reason of the unavailability of material evidence or witnesses and the children's court finds the presenting officer has exercised due diligence to obtain the material or evidence and reasonable grounds exists to believe that the material or evidence will become available.

§ 11.238 Summons.

(a) At least five days prior to the adjudicatory hearing for a minor-in-need-of-care, the children's court shall issue summons to:

- (1) The minor; and
 - (2) The minor's parents, guardian or custodian; and
 - (3) Any person the children's court or the minor believes necessary for the proper adjudication of the hearing.
- (b) The summons shall contain the name of the court; the title of the proceedings, and the date, time and place of the hearing.

(c) A copy of the petition shall be attached to the summons.

(d) The summons shall be delivered personally by a tribal law enforcement officer or appointee of the children's court. If the summons cannot be delivered personally, the court may deliver it by registered mail, and if that is unfeasible, it may be by publication.

§ 11.239 Minor-in-need-of-care adjudicatory hearing.

(a) The children's court shall conduct the adjudicatory hearing for the sole purpose of determining whether the minor is a minor-in-need-of-care. The hearing shall be private and closed.

(b) All the rights listed in § 11.207 of this part shall be afforded the parties in the adjudicatory hearing, except that the court may not appoint counsel if the parties cannot afford one. The notice requirements of § 11.207(a) are met by a summons issued pursuant to § 11.238.

(c) The children's court shall hear testimony concerning the circumstances which gave rise to the complaint.

(d) If the circumstances of the petition are sustained by clear and convincing evidence, the children's court shall find the minor to be a minor-in-need-of-care and proceed to the dispositional hearing.

(e) A finding that a minor is a minor-in-need-of-care constitutes a final order for purposes of appeal.

§ 11.240 Minor-in-need-of-care dispositional hearing.

(a) No later than ten days after the adjudicatory hearing, a dispositional hearing shall take place to hear evidence on the question of proper disposition.

(b) All the rights listed in § 11.207 of this part shall be afforded the parties in the dispositional hearing except the right to free court-appointed counsel. Notice of the hearing shall be given to the parties at least 48 hours before the hearing.

(c) At the dispositional hearing, the children's court shall consider any predisposition report or other study it may have ordered and afford the parties

an opportunity to controvert the factual contents and conclusions of the reports. The children's court shall also consider the alternative predisposition report prepared by the minor and is or her attorney, if any.

(d) The dispositional order constitutes a final order for purposes of appeal.

§ 11.241 Dispositional alternatives.

(a) If a minor has been adjudged a minor-in-need-of-care, the children's court may make whichever of the following dispositions is in the best interest of the child:

(1) Permit the minor to remain with his or her parents, guardian or custodian subject to such limitations and conditions as the court may prescribe; or

(2) Place the minor with a relative within the external boundaries of the reservation subject to such limitations and conditions as the court may prescribe; or

(3) Place the minor in a foster home within the exterior boundaries of the reservation which has been approved by the tribe subject to such limitations and conditions as the court may prescribe; or

(4) Place the minor in shelter care facilities designated by the court; or

(5) Place the minor in a foster home or a relative's home outside the external boundaries of the reservation subject to such limitations and conditions as the court may prescribe; or

(6) Recommend that termination proceedings begin.

(b) Whenever a minor is placed in a home or facility located outside the boundaries of the reservation, the court may require the party receiving custody of the minor to sign an agreement that the minor will be returned to the court upon order of the court.

(c) The dispositional orders are to be in effect for the time limit set by the children's court, but no order may continue after the minor reaches 18 years of age, unless the dispositional order was made within six months of the minor's eighteenth birthday, in which case the disposition may not continue for more than six months.

(d) The dispositional orders are to be reviewed at the children's court discretion, but at least once every six months.

§ 11.242 Modification of dispositional order.

(a) A dispositional order of the children's court may be modified upon a showing of change of circumstances.

(b) The children's court may modify a dispositional order at any time upon motion of the minor or the minor's parents, guardian or custodian.

(c) If the modification involves a change of custody, the children's court shall conduct a hearing pursuant to paragraph (d) of this section to review the dispositional order.

(d) A hearing to review a dispositional order shall be conducted as follows:

(1) All the rights listed in § 11.207 of this part shall be afforded the parties in the review of the disposition hearing except the right to free court-appointed counsel. Notice of the hearing shall be given the parties at least 48 hours before the hearing.

(2) The children's court shall review the performance of the minor, the minor's parents, guardian or custodian, and other persons providing assistance to the minor and the minor's family.

(3) In determining modification of disposition, the procedures prescribed in § 11.240 of this part shall apply.

(4) If the request for review of disposition is based upon an alleged violation of a court order, the children's court shall not modify its dispositional order unless it finds clear and convincing evidence of the violation.

§ 11.243 Termination.

(a) Parental rights to a child may be terminated by the children's court according to the procedures in this section.

(b) Proceedings to terminate parental rights shall be instituted by a petition filed by the presenting officer on behalf of the tribe or by the parents or guardian of the child. The petition shall state:

(1) The name, birthdate, and residence of the minor;

(2) The names and residences of the minor's parents, guardian or custodian;

(3) If the child is in detention or shelter care, the place of detention or shelter care and the time he was taken into custody;

(4) The reasons for the petition.

(c) Upon receipt of the petition, the children's court shall examine it to determine that it alleges adequate reasons and is within the jurisdiction of the children's court. If the petition is inadequate, the magistrate shall dismiss it.

(d) If the petition is adequate the children's court shall set a date for the termination hearing which shall not be more than five days excluding weekends and holidays after the children's court receives the petition from the presenting officer. The hearing may be continued:

(1) On motion of the minor's parents, guardian or custodian; or

(2) Upon motion of the presenting officer by reason of the unavailability of material evidence or witnesses and the children's court finds the presenting

officer has exercised due diligence to obtain the material or evidence and reasonable grounds exist to believe that the material or evidence will become available.

(e) Summons:

(1) At least five days prior to the termination hearing, the children's court shall issue summons to the minor, the minor's parents, guardian or custodian, and any other person the court or the minor's parents, guardian or custodian believes necessary for the proper adjudication of the hearing.

(2) The summons shall contain the name of the court, the title of the proceedings, and the date, time and place of the hearing.

(3) A copy of the petition shall be attached to the summons.

(4) The summons shall be delivered personally by a law enforcement officer or appointee of the children's court. If the summons cannot be delivered personally or by registered mail, the summons may be by publication.

(f) The children's court shall conduct the termination hearing for the sole purpose of determining whether parental rights shall be terminated. The hearing shall be private and closed.

(1) All the rights listed in § 11.207 shall be afforded the parties in the termination hearing except the right to a free court-appointed counsel. The minor's parents need not be a witness against, nor otherwise incriminate themselves.

(2) The children's court shall hear testimony concerning the circumstances that gave rise to the petition, and the need for termination of parental rights.

(3) The children's court may terminate parental rights if it finds beyond a reasonable doubt that:

(i) The child has been abandoned; or

(ii) The minor has suffered physical injuries, willfully and repeatedly inflicted by his or her parent(s) which cause or create a substantial risk of death, disfigurement, or impairment of bodily functions;

(iii) The parent(s) has subjected the minor to willful and repeated acts of sexual abuse;

(iv) The minor has suffered serious emotional or mental harm due to the act of the parent(s); or

(v) The voluntary written consent of both parents has been acknowledged before the court.

(g) Dispositional alternatives:

(1) If parental rights to a child are terminated, the children's court shall place the minor in a foster care or shelter care facility which has been approved by the tribe, and follow adoption procedures of the tribe, if any.

(2) If parental rights to a child are not terminated, the children's court shall make a disposition according to § 11.241 of this part.

(h) The termination order constitutes a final order for purposes of appeal.

(i) No adjudication of termination of parental rights shall affect the minor's enrollment status as a member of any tribe or the minor's degree of blood quantum of any tribe.

John W. Fritz,

Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 85-25071 Filed 10-23-85, 8:45 am]

BILLING CODE 4310-02-M

Minerals Management Service

30 CFR Part 252

Definition of "Area Adjacent to a State"

AGENCY: Minerals Management Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Proposed Rule would amend the current definition of "area adjacent to a State" to deem the States of New York and Rhode Island adjacent to the North Atlantic Planning Area even though the States do not physically border that particular planning area.

DATE: Comments must be hand-delivered or postmarked no later than November 25, 1985.

ADDRESS: Comments should be mailed or hand-delivered to the Department of the Interior, Minerals Management Service, 12203 Sunrise Valley Drive, Mail Stop 646, Room 6A110, Reston, Virginia 22091. Attention: David A. Schuenke.

FOR FURTHER INFORMATION CONTACT: David A. Schuenke, telephone: (703) 860-7916, (FST) 928-7916.

SUPPLEMENTARY INFORMATION: Section 26 of the Outer Continental Shelf Lands Act (OCSLA) permits the Governor of any affected State to designate an official to inspect any privileged data and information received by the Department of the Interior (DOI) regarding activity adjacent to the State. The information is used to evaluate any impacts on the State caused by the offshore activity. The OCSLA does not define the phrase "area adjacent to a State," therefore, the regulations were amended effective April 23, 1984, to include the current definition (published March 22, 1984, 49 FR 10666). Under the current rules, a State is deemed adjacent to an OCS planning area for the purpose of inspection of privileged data and information within the planning area if

the State borders on any portion of the planning area. A regulatory exception deems the Navarin Basin Planning Area as adjacent to the State of Alaska even though the planning area does not physically border on Alaska, because Alaska is the first State landward of the planning area.

Comments were received in response to the earlier Proposed Rule and in separate communications to DOI that certain States would be affected by activity in planning areas on which they do not border and, therefore, should be able to inspect data and information from those areas. As the apparent intent of the right to inspect is to assist States in assessing how they are impacted, States that are affected should be deemed adjacent in order to grant them the right of inspection. While the States of New York and Rhode Island do not physically border the North Atlantic Planning Area, it is anticipated that they will be used as onshore support areas for activity in the North Atlantic and, therefore, would be affected. Both States will continue to be adjacent as well to the Mid-Atlantic Planning Area under the current definition.

The DOI has determined that this action does not constitute a major Federal action affecting the quality of the human environment; therefore, an environmental impact statement is not required.

The DOI has also determined that this document is not a major rule under Executive Order 12291 because there is no economic effect expected from a change in a definition.

The DOI certifies that the rule will not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), as the proposed revision neither imposes new requirements nor deletes existing ones. In addition, neither the two States affected by the Proposed Rule nor the overwhelming majority of operators involved in offshore activities who own the data and information are small entities.

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3504(h).

Author: The document was prepared by Jane A. Roberts, Offshore Rules and Operations Division, Minerals Management Service.

List of Subjects in 30 CFR Part 252

Continental shelf; Freedom of information; Intergovernmental relations; Oil and gas exploration; Public

lands/mineral resources, Reporting and recordkeeping requirements.

Dated: September 12, 1985.

William D. Bettenberg,

Director, Minerals Management Service.

For the reasons set forth above, the proposal to amend 30 CFR Part 252 is as follows:

1. The authority citation for Part 252 continues to read as follows:

Authority: Outer continental Shelf Lands Act, 43 U.S.C. 1331 et seq. as amended, Pub. L. 95-372; Freedom of Information Act (5 U.S.C. 552).

2. Section 252.2(e) is revised to read as follows:

§ 252.2 Definitions.

(e) "Area adjacent to a State" means all of that portion of the OCS included within a planning area if such planning area is bordered by that State. The portion of the OCS in the Navarin Basin Planning Area is deemed to be adjacent to the State of Alaska. The States of New York and Rhode Island are deemed to be adjacent to both the Mid-Atlantic Planning Area and the North Atlantic Planning Area.

[FR Doc. 85-25415 Filed 10-23-85; 8:45 am]

BILLING CODE 4310-MR-M

DEPARTMENT TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD8-85-17]

Drawbridge Operation Regulations; Lafourche Bayou, LA

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Louisiana Department of Transportation and Development (LDOTD), the Coast Guard is considering a change to the regulation which would govern the operation of the swing span bridge now under construction over Lafourche Bayou, mile 49.2, on LA3220 near Lockport, Lafourche Parish, Louisiana. The bridge is scheduled for completion in March 1986, and upon completion would be required to open on signal at all times unless this change is effected. The change would require that at least four hours advance notice be given for an opening of the draw between 6 p.m. and 10 a.m. and that it open on signal otherwise.

This proposal is being made so the bridge can operate under the same

regulation in existence for the swing span bridge on LA655 over Lafourche Bayou, mile 50.8, 1.6 miles upstream, considering that vessel traffic through the two bridge sites is virtually the same. This action should relieve the bridge owner of the burden of having a person constantly available at the bridge during the advance notice period of 6 p.m., to 10 a.m., while still providing for the reasonable needs of navigation.

DATE: Comments must be received on or before December 9, 1985.

ADDRESS: Comments should be mailed to Commander (obr), Eighth Coast Guard District, 500 Camp Street, New Orleans, Louisiana 70130-3396. The comments and other material referenced in this notice will be available for inspection and copying in Room 1115 at this address. Normal office hours are between 8:00 a.m. and 3:30 p.m., Monday through Friday except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT:

Perry Haynes, Chief, Bridge Administration Branch, at the address given above, telephone (504) 589-2965.

SUPPLEMENTARY INFORMATION:

Interested parties are invited to participate in this proposed rulemaking by submitting written views, comments, data or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in this proposal. Persons desiring acknowledgement that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Eighth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulation may be changed in light of comments received.

Drafting information

The drafters of this notice are Perry Haynes, project officer, and Lieutenant Commander James Vallone, project attorney.

Discussion of Proposed Regulation

The swing span bridge under construction over Lafourche Bayou, mile 49.2, on LA3220, is 1.6 miles downstream of the existing swing span bridge, mile 50.8, on LA 655. Both bridges have the same vertical clearances in the closed position.

Two companies are located on the 1.6 mile waterway stretch between the two bridges (Bordelon Brothers Marine and Lytal Marine Operators), at which waterway traffic originates and

terminates. Company information indicates that Bordelon's traffic is split about 90/10 between waterway transits through the upstream bridge and the site of the downstream one, while Lytal's traffic is split about 50/50. Openings of the existing upstream bridge reflect this split, in addition to traffic through both bridge sites. Consequently, openings to be expected for the bridge under construction would be no more than for the existing upstream bridge, establishing the basis for placing the new bridge under the same operating regulation in effect for the existing bridge, while providing for the reasonable needs of navigation. This regulation would require that at least four hours advance notice be given for an opening of the draw between 6 p.m. and 10 a.m. and that it open on signal otherwise.

The advance notice for opening the draw would be given by placing a collect call during normal working hours to the LDOTD Office in Houma, Louisiana, telephone (504) 851-0900, or at any time to the LDOTD District Office in Lafayette, Louisiana, telephone (318) 233-7404. From afloat, this contact may be made by radiotelephone through a public coast station.

As with the existing bridge at mile 50.8, the LDOTD recognizes that there may be an unusual occasion to open the new bridge on less than four hours notice for an emergency or to operate the bridge on demand for an isolated but temporary surge in waterway traffic, and has committed to doing so if such an event should occur.

Economic Assessment and Certification

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that the proposal simply extends the operation regulation in effect for the existing bridge at mile 50.8, to the bridge under construction at mile 49.2, in that the traffic through the existing bridge is considered representative of the traffic to be expected through the bridge under construction. As is the case for the existing bridge, mariners can reasonably give four hours advance notice for an opening of the bridge by placing a collect call to the bridge owner at any time. Similarly, these mariners are mainly repeat users and scheduling their

arrival at the bridge at the appointed time should involve little or no additional expense to them. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulation

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATING REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; and 49 CFR 1.46(c)(5) and 33 CFR 1.05-1(g).

2. Section 117.465 is amended by revising paragraph (a) to read as follows:

§ 117.465 Lafourche Bayou.

(a) The draws of the S3220 bridge, mile 49.2 near Lockport, and the S655 bridge, mile 50.8 near Lockport, shall open on signal; except that, from 6 p.m. to 10 a.m. the draws shall open on signal if at least four hours notice is given. During the advance notice period, the draws shall open on less than four hours notice for an emergency and shall open on demand should a temporary surge in waterway traffic occur.

Dated: October 17, 1985.

Clyde T. Lusk, Jr.,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc 85-25433 Filed 10-23-85; 8:45 am]

BILLING CODE 4910-14-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 201-32

GSA Board of Contract Appeals ADP Protests

AGENCY: Office of Information Resources Management, GSA.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice invites written comments on a proposed Federal Information Resources Management Regulation (FIRMR) amendment that addresses responsibilities of all Federal agencies when involved with protests before the GSA Board of Contract

Appeals (GSBCA) regarding the procurement of certain automatic data processing (ADP) resources. The action is necessary notwithstanding the general provisions published in the Federal Acquisition Regulation (FAR) applicable only to Executive agencies. The intent is to fully accomplish the statutory objectives and requirements of section 2713 of the Competition in Contracting Act of 1984 (Pub. L. 98-369) (40 U.S.C. 759(h)).

DATE: Comments are due December 23, 1985.

ADDRESS: Comments should be submitted to the General Services Administration (KMPP), Project 84.63, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: William R. Loy, Policy Branch, Office of Information Resources Management, Telephone (202) 568-0194 or FTS, 568-0194. The full text of the proposed rule is available upon request.

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this proposed rule is not a major rule for purposes of Executive Order 12291 of February 17, 1981. GSA decisions are based on adequate information concerning the need for, and the consequences of, the rule. The rule is written to ensure maximum benefits to Federal agencies. This is a Government-wide management, acquisition, and use regulation that will have little or no net cost effect on society.

List of Subjects in 41 CFR Part 201-32

Information resources activities, Government procurement, Hearing and appeal procedures, Computer technology, Competition.

Authority: Sec. 205(c), 64 Stat. 390; 40 U.S.C. 486(c).

Dated: September 24, 1985.

Terence C. Golden,

Administrator of General Services.

[FR Doc. 85-25404 Filed 10-23-85; 8:45 am]

BILLING CODE 6820-25-M

DEPARTMENT OF TRANSPORTATION

46 CFR Part 10

[CGD 85-089]

Training in the Use of Automatic Radar Plotting Aids (ARPA)

AGENCY: U.S. Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: On November 19, 1981, the 12th Assembly of the International Maritime Organization (IMO) adopted Resolution A.482 entitled, "Training in

the Use of Automatic Radar Plotting Aids." Basically, the resolution recommends that Automatic Radar Plotting Aids (ARPA) training be required for all masters, chief mates, and officers in charge of a navigational watch on ships fitted with ARPA. Because the United States supported these guidelines, and realizing the potential impact of this IMO recommendation, the Coast Guard invites comment on whether regulatory action is necessary to ensure that the training of U.S. licensed officers meets the IMO recommendations.

DATE: Written comments must be received on or before December 23, 1985.

ADDRESS: Comments should be sent to Commandant (G-CMC/21), (CGD 85-089), U.S. Coast Guard, Washington, D.C. 20593.

FOR FURTHER INFORMATION CONTACT: CDR George N. Naccara, (G-MVP-3), 2100 Second Street SW., Washington, DC 20593 (202) 426-2240.

SUPPLEMENTARY INFORMATION: Title 33 of the Code of Federal Regulations, § 164.38, requires the eventual installation of an ARPA unit on every self-propelled vessel of 10,000 gross tons or more operating on the navigable waters of the United States, excluding those operating on the Great Lakes and their connecting tributary waters. This will affect approximately 9% of the U.S. flag vessels required to be radar equipped.

In addition to theoretical knowledge, the proper operation of an ARPA unit requires the watchstanding deck officer to know unique equipment procedures involved with the manipulation of control buttons, switches, etc., which vary with each manufacturer's equipment design and operating procedures. The IMO resolution cited above states that all masters, chief mates, and officers in charge of a navigational watch on ships fitted with ARPAs must have at least a knowledge of:

(a) The possible risks of over-reliance on ARPA;

(b) The principle types of ARPA systems and their display characteristics;

(c) The IMO performance standards for ARPA;

(d) Factors affecting system performance and accuracy;

(e) Tracking capabilities and limitations of ARPA; and,

(f) Processing delays.

Although closely related to ARPA training requirements, the radar regulations that appeared as a final rule

in the Federal Register of September 16, 1982, were not as difficult to develop since techniques for proper radar watchstanding are practically universal. Furthermore, the Coast Guard evaluation of radar training courses with the required simulator exercises and examination is not quite as complex as the evaluations of ARPA courses would be. The lack of a standard operating format or arrangement for ARPA consoles poses a significant problem for training institutions interested in developing an ARPA program.

Thus far, the only ARPA training program submitted to the Coast Guard for approval included training on several different units, but not all that are available in the market place. However, since that time it appears that at least one company has overcome the problem of ARPA training incompatibility with the broad spectrum of ARPA types. They are offering a comprehensive package based on a console which features interchangeable ARPA configurations. Whether or not this represents the end of a major obstacle to vendors attempting to provide a complete ARPA training program remains to be seen. On the other hand, the value of a generic, theory-oriented ARPA training program should not be understated. Effective training programs attempt to cover both theory and practical applications. In fact, these two aspects are particularly useful in enhancing a navigator's understanding of collision avoidance systems. The theory-related subjects were listed in a preceding paragraph (see items a through f). The following is an outline of the practical portion of an approved ARPA program; it would include the hands-on demonstration (utilizing an ARPA simulator) of the following skills which are listed as they appear in the IMO resolution cited above:

- (g) Setting up and maintaining ARPA displays;
- (h) When and how to use the operational warnings, their benefits and limitations;
- (i) System operational tests;
- (j) When and how to obtain information in both relative and true motion modes of display, including:
 - (1) Identification of critical echoes;
 - (2) Use of exclusion areas in automatic mode;
 - (3) Speed and direction of target's relative movement;
 - (4) Time to, and predicted range at, target's closest point of approach;
 - (5) Course and speed of targets;
 - (6) Detecting course and speed changes of targets and the limitations of such information;

(7) Effect of changes in own ship's course or speed or both;

(8) Operation of the trial maneuver;

(k) Manual and automatic acquisition of targets and their respective limitations;

(l) When and how to use true and relative vectors and typical graphic representation of target information and danger areas;

(m) When and how to use information on past positions of targets being tracked; and,

(n) Application of the International Regulations for Preventing Collisions at Sea.

A requirement for approved courses to have training in all the equipment available may add to the length and expense of courses. However, a theory-oriented basic course in ARPA may be an appropriate part of most approved radar observer (Unlimited) courses. As ARPA equipment becomes mandatory on the larger, ocean-going vessels, we anticipate that many radar observer courses will include this training.

In addition to completion of an approved radar observer course, it is the responsibility of the licensed personnel serving on a vessel to assure themselves that they are familiar with the specific ARPA equipment installed. This responsibility is being formalized in a proposed revision to Part 10 (Licensing of Officers) of Title 46 of the Code of Federal Regulations which addresses this responsibility in the following manner:

"... It is incumbent upon all licensed personnel to become familiar with all unique characteristics of each vessel served upon as soon as possible after reporting aboard for duty... this includes but is not limited to... proper operation of the installed navigation equipment..."

In the absence of a regulatory requirement, it is possible that owners of ARPA-equipped vessels, in order to have qualified persons operating their vessels, will provide some form of in-house training for the specific equipment used on those vessels. Given this scenario, should the Coast Guard ensure that all in-house training courses are in conformance with IMO guidelines? It would seem unlikely that they will install relatively expensive, state-of-the-art equipment and not ensure that the vessel's officers know how to use it, knowing that improper use can contribute to costly casualties. Unfortunately, in the case of radar equipment, history does not support this assumption. Comments are requested on the type of in-house training shipping companies are giving, if any, and the effectiveness of such training.

A number of the Coast Guard approved radar observer courses already include training and familiarization in the basic principles of ARPA and there is a trend to enhance this aspect of the courses. The Coast Guard will continue to encourage the development of ARPA-related curricula. Whether or not government intervention is mandated, with an increasing number of ships installing ARPA there should be growth in the market for training in its proper use.

Dated: October 21, 1985.

W.J. Ecker,

Captain, U.S. Coast Guard, Acting Chief,
Office of Merchant Marine Safety.

[FR Doc. 85-25427 Filed 10-23-85; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 85-67; RM-4854]

TV Broadcast Station in Gu Achi, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of proposal.

SUMMARY: Action taken herein dismisses the proposal to assign UHF television Channel 35 to Gu Achi, Arizona, based on the petitioner's failure to express continuing interest in the proposal.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1982, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1983, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Report and Order (Proceeding Terminated)

In the matter of Amendment of § 73.606(b), Table of Assignments, TV Broadcast Stations (Gu Achi, Arizona) MM Docket No. 85-67, RM-4854.

Adopted: October 15, 1985.

Released: October 18, 1985.

By the Chief, Policy and Rules Division.

1. The Commission herein considers the *Notice of Proposed Rule Making*, 50 FR 14947, published April 16, 1985, issued in response to a petition filed by Freedom Development Corporation ("petitioner"), proposing the assignment of UHF television Channel 35 to Gu Achi, Arizona, as that community's first local television service. Petitioner failed to file supporting comments in response to the *Notice*. Opposition comments were filed by Trinity Broadcasting, of Arizona, Inc. ("Trinity"), licensee of Station KPAZ-TV (Channel 21), Phoenix, Arizona. No other comments of interest in the proposal were received.

2. Absent an expression of interest in the use of a proposed channel, it is the Commission's general policy to refrain from making a new assignment to a community. See, e.g., *Williams, Arizona*, 47 FR 20827, published May 14, 1982, and paragraph 2 of the Appendix to the *Notice*. Therefore, since there has been no such interest here, we will dismiss the proposal.

3. In light of our decision herein, the opposition comments filed by Trinity are moot, and thus no discussion thereon is appropriate.

4. In view of the foregoing, it is ordered, That the petition of the Freedom Development Corporation, proposing the assignment of UHF television Channel 35 to Gu Achi, Arizona, is hereby dismissed.

5. It is further ordered, That this proceeding is terminated.

6. For further information concerning the above, contact Nancy V. Joyner, Mass Media Bureau, (202) 634-6530,

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85-25353 Filed 10-23-85; 8:45 am]

BILLING CODE 6712-01-M

On page 42050, second column, first complete paragraph, seventh line, "\$0.02" should have read "\$0.20".

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Public Hearing and Reopening of Comment Period on Proposed Endangered Status for *Cordylanthus Palmatus* (Palmate-Bracted Bird's Beak)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearing and reopening of comment period.

SUMMARY: The U.S. Fish and Wildlife Service gives notice that a public hearing will be held on the proposed determination of endangered status for *Cordylanthus palmatus* (palmate-bracted bird's beak) and that the comment period on this proposal is reopened. Historically, the species is known from scattered locations in Fresno and Madera Counties in the San Joaquin Valley, north into the Sacramento Valley from San Joaquin to Colusa Counties, and in the Livermore Valley, Alameda County. *Cordylanthus palmatus* presently is known from only three small populations. The hearing and the reopening of the comment period will allow comments on this proposal to be submitted from all interested parties.

DATES: The comment period on the proposal is reopened October 24, 1985. The public hearing will be held from 7:00 to 9:00 p.m., on Friday, November 15, 1985, in Stockton, California. The comment period, which originally closed on September 16, 1985, now closes December 5, 1985.

ADDRESSES: The public hearing will be held at the San Joaquin Community College, 5151 Pacific Avenue, Stockton, California. Written comments and materials should be sent to the Regional Director, U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 N.E. Multnomah St., Suite 1692, Portland, Oregon 97232. Comments and materials received will be available for public inspection during normal business hours, by appointment, at the Regional Endangered Species Division at the above Regional Office address.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne S. White, Chief, Division of

Endangered Species, U.S. Fish and Wildlife Service, 500 N.E. Multnomah St., Suite 1692, Portland, Oregon 97232 (503/231-6131 or FTS 429-6131).

SUPPLEMENTARY INFORMATION:

Background

Cordylanthus palmatus, an annual herb of the snapdragon family, was originally collected by Ferris in 1916 and described by her in 1918 under the name *Adenostegia palmata*. Little is known of the ecology of *Cordylanthus palmatus* aside from its occurrence in and possible confinement to a particular soil type named saline-alkali (black alkaline) of lowland flats and plains. This habitat was historically rare in much of cis-montane California and is now much reduced in extent.

Section 4(b)(5)(E) of the Endangered Species Act of 1973, as amended, requires that a public hearing be held, if requested within 45 days of the publication of a proposed rule. On August 13, 1985, a request for a public hearing was received from Leo J. Parry, Jr. The Service has scheduled this hearing for November 15, 1985 from 7:00 to 9:00 p.m. at the San Joaquin Community College, 5151 Pacific Avenue, Stockton, California. Those parties wishing to make statements for the record should have available a copy of their statements to be presented to the Service at the start of the hearing. Oral statements may be limited to 5 or 10 minutes, if the number of parties present that evening necessitates some limitation. There are no limits to the length of written comments presented at this hearing or mailed to the Service.

The comment period on the proposal originally closed on September 16, 1985. In order to accommodate the hearing, the Service also reopens the public comment period. Written comments may now be submitted for all proposals until December 5, 1985, to the Service office in the Addresses section.

Author

The primary author of this notice is Ms. Carolyn Bohan, U.S. Fish and Wildlife Service, 500 N.E. Multnomah St., Suite 1692, Portland, Oregon 97232 (503/231-6131 or FTS 429-6131).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.; Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411).

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 7

[OST Docket No. 43466, Notice No. 85-14]

Public Availability of Information; Freedom of Information Act Regulations

Correction

In FR Doc. 85-24260 beginning on page 42049 in the issue of Thursday, October 17, 1985, make the following correction:

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife,
Fish, Marine mammals, Plants
(agriculture).

Dated: October 18, 1985.

Richard Myshak,

Regional Director.

[FR Doc 85-25348 Filed 10-23-85; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric
Administration

50 CFR Part 651**Northeast Multispecies Fishery;
Availability of Fishery Management
Plan and Request for Comments**

AGENCY: National Marine Fisheries
Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of a
fishery management plan and request
for comments.

SUMMARY: NOAA issues notice that the
New England Fishery Management
Council (Council) has submitted a
Fishery Management Plan for the

Northeast Multispecies Fishery (FMP)
for Secretarial review and is requesting
comments from the public. Copies of the
plan may be obtained from the address
below.

DATE: Comments on the plan should be
submitted on or before January 3, 1986.

ADDRESS: All comments should be sent
to Mr. Richard Schaefer, Acting
Regional Director, National Marine
Fisheries Service, Northeast Regional
Office, 14 Elm Street, Gloucester, MA
01930-3799. Mark the outside of the
envelope "Comments on the
Multispecies FMP."

FOR FURTHER INFORMATION CONTACT:
Peter Colsoi, Groundfish Coordinator,
617-281-3600, ext. 252.

SUPPLEMENTARY INFORMATION: The
Magnuson Fishery Conservation and
Management Act, as amended (16 U.S.C.
1801 *et seq.*) requires that each fishery
management council submit any fishery
management plan it prepares to the
Secretary of Commerce (Secretary) for
review and approval or disapproval.
This act also requires that the Secretary,
upon receiving the plan, must
immediately publish a notice that the
plan is available for public review and
comment. The Secretary will consider

the public comments in determining
whether to approve the plan.

This plan will replace the Interim FMP
for Atlantic Groundfish and proposes to:
(1) Establish new minimum size
regulations for seven major commercial
species; (2) establish minimum sizes for
recreationally caught cod and haddock;
(3) implement major extensions of
closed spawning areas on Georges Bank;
(4) establish a closed area in Southern
New England to enhance yellowtail
flounder spawning potential; (5) make
major changes in the regulations
governing small mesh fisheries; (6)
implement a major increase in the mesh
size of mobile trawl gear; (7) establish a
marking requirement for gillnet gear;
and (8) increase the spawning potential
for redfish.

Regulations proposed by the Council
and based on this plan are scheduled to
be published within 30 days.

(16 U.S.C. 1801 *et seq.*)

Dated: October 21, 1985.

Joseph W. Angelovic,

Deputy Assistant Administrator For Science
and Technology, National Marine Fisheries
Service.

[FR Doc. 85-25434 Filed 10-22-85; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register

Vol. 50, No. 206

Thursday, October 24, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Stanislaus National Forest Grazing Advisory Board; Meeting

The Stanislaus National Forest Grazing Advisory Board will meet at 8:00 p.m. on November 26, 1985, in Conference Room A of the Forest Supervisor's Office, 19777 Greenley Road, Sonoma, California 95370. The purpose of this meeting is for recommendations on allotment management plans and use of range betterment funds.

The meeting will be open to the public. Persons who wish to attend should notify me at 19777 Greenley Road, Sonoma, California 95370. Written statements may be filed with the committee before or after the meeting.

The committee has not established rules for public participation.

Dated: October 16, 1985.

Blaine L. Cornell,

Forest Supervisor.

[FR Doc. 85-25328 Filed 10-23-85; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Federal Funding; Oil Creek Watershed, Pennsylvania

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of Intent to Deauthorize Federal Funding.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Pub. L. 83-566, and the Soil Conservation Service Guidelines (7 CFR Part 622); the Soil Conservation Service gives notice of the intent to deauthorize Federal funding for the Oil Creek Watershed project, Crawford, Erie, Venango, and Warren Counties, Pennsylvania.

FOR FURTHER INFORMATION CONTACT:

Mr. James H. Olson, State Conservationist, Soil Conservation Service, Federal Building, 228 Walnut Street, Harrisburg, Pennsylvania 17108, telephone (717) 782-4453.

SUPPLEMENTARY INFORMATION:

A determination has been made by James H. Olson that the proposed works of improvement for the Oil Creek Watershed project will not be installed. The sponsoring local organizations have concurred in this determination and agree that Federal funding should be deauthorized for the project. Information regarding this determination may be obtained from Mr. James H. Olson, State Conservationist, at the above address and telephone number.

No administrative action on implementation of the proposed deauthorization will be taken until 60 days after the date of this publication in the Federal Register.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program.) Executive order 12372 regarding intergovernmental review of federal and federally assisted programs and projects is applicable.

Dated: October 15, 1985.

James H. Olson,
State Conservationist.

[FR Doc. 85-25420 Filed 10-23-85; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Office of the Secretary

Senior Executive Service, Performance Review Board; Performance Appraisal System

Below is a listing of individuals who are eligible to serve on the Performance Review Board in accordance with the Office of the Secretary Senior Executive Service (SES) Performance Appraisal System:

Hugh, L. Brennan
Guy W. Chamberlin, Jr.
John B. Christian
David L. Edgell
David Farber
Michael A. Levitt
Mark B. Policinski
Roger J. Whyte

Otto J. Wolff

Jo Ann Sondey-Hersh,

Executive Secretary, Office of the Secretary,
Performance Review Board.

[FR Doc. 85-25397 Filed 10-23-85; 8:45 am]

BILLING CODE 3510-85-M

International Trade Administration

[A-580-007]

Circular Welded Carbon Steel Pipes and Tubes From Korea; Final Results of Changed Circumstances, Administrative Review and Revocation of Antidumping Duty Order

Correction

In the issue of Monday, October 21, 1985, in the document beginning on page 42582, make the following correction: On page 42583, in the first column, in the file line "FR Doc. 85-23783" should read FR Doc. 23783a".

BILLING CODE 3510-25-M

[C-201-009]

Certain Iron-Metal Construction Castings From Mexico; Initiation and Preliminary Results of Administrative Review of Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration Commerce.

ACTION: Notice of Initiation and Preliminary Results of Administrative Review of Countervailing Duty Order.

SUMMARY: In response to a request from the petitioner, the Department of Commerce has conducted an administrative review of the countervailing duty order on certain iron-metal construction castings from Mexico. The review covers the period December 1, 1982 through March 31, 1983 and nine programs.

As a result of the review, the Department has preliminarily determined the bounty or grant to be 0.37 percent *ad valorem* for the period of review, a rate the Department considers to be *de minimis*. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: October 24, 1985.

FOR FURTHER INFORMATION CONTACT: Christopher Beach or Stephen Nyschot.

Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On March 2, 1983, the Department of Commerce ("the Department") published in the *Federal Register* (48 FR 8834) the countervailing duty order on certain iron-metal construction castings from Mexico and announced its intent to conduct an administrative review of the order. In accordance with § 355.10 of the Commerce Regulations, the petitioner requested an administrative review of the order on September 13, 1985. As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

On May 7, 1985, the respondents requested that we revoke this order, based on the "Understanding between the United States and Mexico Regarding Subsidies and Countervailing Duties." Based on our interpretation of the Understanding, this request for revocation is not justified. Interested parties may comment on this issue.

Scope of the Review

Imports covered by the review are shipments of Mexican iron-metal construction castings, including manhole covers, rings and frames, catch basin frames and grates, cleanout covers and grates, meter boxes, and valve boxes. These castings are commonly called municipal or public works casting. Such merchandise is normally classifiable under items 657.0950 and 657.0990 of the Tariff Schedules of the United States Annotated ("TSUSA"). However, alloyed municipal castings are currently classifiable under TSUSA items 657.2540 and 657.2550. After reviewing the petition and the Department's original final determination (48 FR 8834) in the case, we do not find any indication of an intent to limit the scope of the order to non-alloyed castings. Therefore, we preliminarily determine that the municipal or public works castings covered by this order include all such castings whether or not alloyed.

The review covers the period December 1, 1982 through March 31, 1983 and nine programs: (1) FONEI; (2) FOGAIN; (3) state tax incentives; (4) CEDI; (5) CEPFOI; (6) FOMEX; (7) import duty reductions and exemptions; and (8) FOMIN.

Analysis of Programs

The Fund for Industrial Development ("FONEI") is a specialized financial

development fund, administered by the Banco de Mexico, which grants long-term peso loans at below-market rates. FONEI loans are available under various programs having different eligibility requirements. The plant expansion program is designed for the creation, expansion, or modernization of enterprises in order to promote the efficient production of goods capable of competing in the international market or to meet the objectives of the National Development Plan ("NDP"), which include industrial decentralization.

We consider this FONEI loan program to confer a bounty or grant because it restricts loan benefits to those enterprises located outside of Zone IIIA.

One firm had FONEI plant expansion loans outstanding during the period of review. One loan was granted in 1977 with a fixed interest rate of 13.5 percent. We used as our benchmark 17.20 percent, the 1977 national average commercial benchmark for peso-denominated loans as published by the Morgan Guaranty Trust Company in "World Financial Markets." We used this benchmark rather than our usual rate as published in *Indicadores Economicos* because the latter rate was unavailable for 1977.

To find the benefit, we used the long-term loan methodology outlined in the Subsidies Appendix to the notice of "Final Affirmative Countervailing Duty Order" on certain cold-rolled carbon steel flat-rolled products from Argentina (49 FR 18006, April 26, 1984) ("the Subsidies Appendix"). We compared the interest the firm paid each year of the loan to the interest the firm would have paid using the benchmark interest rate to find the benefit stream of the loan for each year the loan was outstanding.

We then found the present values of each year's benefit, totaled them, and spread that total over the life of the loan. In calculating the present values, we used as the weighted cost of capital the same national average commercial lending rate because we did not have sufficient information to calculate the actual weighted cost of capital. To determine the benefit for the review period (four months), we used one third of the total 1983 benefit.

The second loan under this program had a variable interest rate, which was the Costa Porcentual Promedio de Captacion en Moneda Nacional ("CPP"). The Banco de Mexico adjusted this loan's interest rate every six months. To find the benefit, we treated the loan as a short-term (six month) loan with one interest payment during the review period. The preferential rate was 43.88 percent (the CPP for July 1982) and the benchmark, the 1982 national average

rate for peso-denominated short-term loans as published in *Indicadores Economicos*, was 46.02 percent. The interest differential, therefore, was 2.14 percent. We adjusted the interest rate to account for the six-month term of the loan and multiplied the principal by the adjusted interest differential to find the benefit.

We then added the benefits from the two loans and divided by the firm's total exports during the review period. We used total exports rather than total sales because the Mexican government provided no information on total sales. Finally, we weight-averaged the benefit by the firm's share of total exports to the U.S. and found the total bounty or grant to be 0.31 percent *ad valorem*.

(2) FOGAIN: The Guarantee and Development Fund for Medium and Small Industries ("FOGAIN") provides preferential long-term financing, at interest rates below prevailing rates, to support the development and viability of small and medium-sized business. The interest rate varies depending upon the size of the borrower, whether the borrower has a designated priority status, and the geographic location of the business. Medium-sized businesses, not designated as priority and located in a region of controlled industrial growth, are eligible for FOGAIN loans at the highest listed rate. The program is countervailable to the extent that the interest rate received by a particular company is below the highest listed rate a company could receive under FOGAIN.

One firm reviewed had two FOGAIN loans outstanding during the period of review. These loans were taken out in 1980 and 1981. Both had a fixed interest rate of 14 percent. The highest listed rate available under FOGAIN at the time of contract for each loan was 22 percent and 34 percent respectively. Our method of calculating the benefit is similar to that used for the fixed rate FONEI loan. We calculated the benefit stream for each year, found the present values, totaled these values, and then spread the total over the lives of the loans. In calculating the present values, we used as the weighted cost of capital the national average commercial lending rates for 1980 and 1981, as published in *Indicadores Economicos*, because we did not have sufficient information to calculate the actual weighted cost of capital. To find the benefit for the review period, we took one third of the total 1983 benefit and divided it by the firm's total exports in the four month review period. We used total exports because we had no information on total sales. We then weight-averaged the

benefit by the firm's share of total exports to the United States during the review period and found the total bounty or grant under this program to be 0.03 percent *ad valorem*.

(3) *State Tax Incentives*: The state of Baja California imposes a 0.75 percent tax on employee wages and salaries. Manufacturers located in Baja California who export 100 percent of their products are exempt from this tax. This program therefore constitutes an export subsidy.

The response stated that only one firm received benefits under this program. Five respondent firms were eligible for the benefit. During verification, we found that the three eligible firms verified received benefits under this program. Since we did not verify the response for two of the five eligible firms, we used for the benefit of those two the best information available, an average of the benefits received by the three firms verified. Also, the firm reported to have benefited received a benefit much larger than reported. Therefore, using the best information available, we calculated the *ad valorem* benefit resulting from this program by dividing the tax savings for each of the five firms by each firm's exports to the U.S. during the review period. We then weight-averaged this by each firm's share of total exports to the U.S. We preliminarily determine the net bounty or grant from the state tax incentives program to be 0.03 percent *ad valorem*.

(4) *Other Programs*: We also examined the following programs and preliminarily find that exporters of castings did not use them during the review period:

(A) Tax Rebate Certificates ("CEDI");

(B) Certificates of Fiscal Promotion ("CEPROFI")

(C) The Fund for the Promotion of Exports of Mexican Manufactured Products ("FOMEX");

(D) Import duty reductions and exemptions; and

(E) National Industrial Development Fund ("FOMIN").

Preliminary Results of Review

As a result of our review, we preliminarily determine the bounty or grant for the period of review to be 0.37 percent *ad valorem*. The Department considers any rate less than 0.50 percent *ad valorem* to be *de minimis*.

The Department therefore intends to instruct the Customs Service to assess no countervailing duties on shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after December 16, 1982, the date of the Department's preliminary affirmative

determination, and exported on or before March 31, 1983.

The Department intends to instruct the Customs Service not to collect a cash deposit of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. This deposit waiver shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.10 of the Commerce Regulations (19 CFR 355.10).

Dated: October 18, 1985.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary, Import Administration.

[FR Doc. 85-25385 Filed 10-23-85; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Mid-Atlantic Fishery Management Council; Meeting Cancellation

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Mid-Atlantic Fishery Management Council's October 30-31, 1985, public meeting to be held in Virginia Beach, VA, as published in the Federal Register on October 11, 1985 (50 FR 41550) has been cancelled. For further information contact John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901; telephone: (302) 674-2331.

Dated: October 18, 1985.

William G. Gordon,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 85-25435 Filed 10-23-85; 8:45 am]

BILLING CODE 3510-22-M

Patent and Trademark Office

Current Membership of Performance Review Board

This notice announces the termination of Richard J. Wieland's appointment. He has retired. He is succeeded by Robert F. Kempf.

The current membership of the Board is as follows:

Donald J. Quigg, Chairman, Deputy Commissioner of Patents and Trademarks, U.S. Patent and Trademark Office, Washington, DC 20231. Term—permanent

Rene D. Tegtmeyer, Member, Assistant Commissioner for Patents, U.S. Patent and Trademark Office, Washington, DC 20231. Term—permanent

Margaret M. Laurence, Member, Assistant Commissioner for Trademarks, U.S. Patent and Trademark Office, Washington, DC 20231. Term—permanent

Bradford R. Huther, Member, Assistant Commissioner for Finance and Planning, U.S. Patent and Trademark Office, Washington, DC 20231. Term—permanent

Theresa A. Brelsford, Member, Assistant Commissioner for Administration, U.S. Patent and Trademark Office, Washington, DC 20231. Term—permanent

Samuel S. Matthews, Member, Director, Patent Examining Group 250, U.S. Patent and Trademark Office, Washington, DC 20231. Term—expires January 31, 1986

Robert F. Kempf, (Outside) Member, Assistant General Counsel for Patent Matters, Office General Counsel, HQ National Aeronautics and Space Administration, Washington, DC 20546. Term—expires October 1, 1988

Samih N. Zaharna, Member, Director, Patent Examining Group 320, U.S. Patent and Trademark Office, Washington, DC 20231. Term—expires January 31, 1986

Persons desiring any further information about the membership of the PRB may contact Ms. Carolyn P. Acree, Personnel Office, U.S. Patent and Trademark Office, Washington, DC 20231. Telephone (703) 557-2662.

Dated: October 18, 1985.

Donald J. Quigg,

*Assistant Secretary and Commissioner of
Patents and Trademarks.*

[FR Doc. 85-25332 Filed 10-23-85; 8:45 am]

BILLING CODE 3510-16-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comment on Bilateral Consultations With the Government of Bangladesh on Category 640

October 21, 1985.

On September 30, 1985, the United States Government, under Article 3 of the Arrangement Regarding International Trade in Textiles, requested the Government of Bangladesh to enter into consultations concerning exports to the United States of men's and boys' woven shirts of man-made fibers in Category 640, produced or manufactured in Bangladesh.

The purpose of this notice is to advise the public that, if no agreement is reached in consultations with Bangladesh, the Committee for the Implementation of Textile Agreements may later establish a limit of 237,569 dozen for the entry and withdrawal from warehouse for consumption of textile products in Category 640, produced or manufactured in Bangladesh and exported to the United States during the twelve-month period which began on September 30, 1985 and extends through September 29, 1986.

A summary market statement for this category follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Category 640 is invited to submit such comments or information in ten copies to Mr. Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C., and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the

Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Walter C. Lenahan,

*Chairman, Committee for the Implementation
of Textile Agreement.*

Bangladesh—Market Statement

*Category 640—Men's and Boys' Woven
Shirts*

September 1985.

Summary and Conclusions

United States imports of Category 640 from Bangladesh were 297,132 dozens for the year ending July 1985. This compares with 5,462 dozens for the same period a year earlier. Imports for the January—July 1985 period were 279,168 dozens. In the same period last year imports were only 3,436 dozens. The sharp and substantial increase of low-valued imports of Category 640 from Bangladesh is disrupting the U.S. market.

U.S. Production

U.S. production of Category 640 declined steadily between 1979 to 1984. Production slipped from 13,477,000 dozens in 1979 to 9,449,000 dozens in 1984.

Domestic Producer's Market Share

Domestic producers' market share has continually declined. In 1979, the share was 58.2 percent; in 1982, it slipped below 50 percent; and in 1984 it was 41.6 percent.

U.S. Imports

World imports of this Category increased from 9,664,000 dozens in 1979 to 13,290,000 dozens in 1984. World imports grew 23.4 percent from 10,770,000 dozens in 1983 to the 13,290,000 dozens in 1984. During the first seven months of 1985 world imports were up 11.8 percent from the same period in 1984. Bangladesh accounted for 29 percent of the total world import growth when January-July 1985 imports are compared with a year earlier.

Import to Production Ratios

The import to production ratio for this category has increased sharply since 1979. From a level of 72 percent in 1979, the ratio almost doubled to 141 percent in 1984.

[FR Doc 85-25386 Filed 10-23-85; 8:45 am]

BILLING CODE 3510-DR-M

Request for Public Comment on Bilateral Textile Consultations With Hong Kong Concerning Man-Made Fiber Luggage in Category 670pt.

October 21, 1985.

On September 27, 1985, the United States Government, under Article 3 of

the Arrangement Regarding International Trade in Textiles, requested the Government of Hong Kong to enter into consultations concerning exports to the United States of man-made fiber luggage in Category 670pt. (only T.S.U.S.A. numbers 706.3420, 706.4144, and 706.4152), produced or manufactured in Hong Kong.

The purpose of this notice is to advise that, if no solution is agreed upon in consultations with Hong Kong, the Committee for the Implementation of Textile Agreements may later establish a limit of 6,341,557 pounds for the entry and withdrawal from warehouse for consumption of man-made fiber luggage in Category 670pt., produced or manufactured in Hong Kong and exported during the twelve-month period which began on September 27, 1985 and extends through September 26, 1986.

A summary market statement concerning this category follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Category 670pt. is invited to submit such comments or information in ten copies to Mr. Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly.

Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C., and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Walter C. Lenahan,

*Chairman, Committee for the Implementation
of Textile Agreements*

Hong Kong—Market Statement

Category 670—Luggage, Man-Made Fiber
September 1985.

Summary and Conclusions

U.S. imports of Category 670—luggage from Hong Kong during the year ending July 1985 totaled 6,718,000 pounds, 61 percent higher than the 4,183,000 pounds imported a year earlier. January-July 1985 imports from Hong Kong were 4,095,000 pounds, compared with 2,679,000 pounds imported during the same period in 1984. Hong Kong was the fourth largest supplier of man-made fiber luggage during the first seven months of 1985 and accounted for six percent of total imports in this category. It was the largest uncontrolled supplier.

The sharp and substantial increase of low-valued imports of Category 670-L from Hong Kong is disrupting the U.S. market.

Production and Imports

U.S. production of man-made luggage is measured by the fabric consumed by the luggage producing establishments while imports are measured by the fabric content of imported luggage.

The fabric consumed by the U.S. luggage manufacturers dropped sharply from 36 million pounds in 1982 to 30 million in 1984. Imports of fabric from all sources contained in non-braided luggage increased from 62 million pounds in 1982 to 143 million in 1984.

Import Penetration and Market Share

The ratio of imports to production of Category 670-Luggage sharply increased from 172 percent in 1982 to 477 percent in 1984. The U.S. producer's share of the market for domestically produced and imported luggage declined from 36.7 percent in 1982 to 17.3 percent in 1984.

[FR Doc. 85-25387 Filed 10-23-85; 8:45 am]
BILLING CODE 3510-DR-M

**Request for Public Comment on
Bilateral Consultations With the
Government of Thailand To Review
Trade in Category 442**

October 21, 1985.

On September 30, 1985, the Government of the United States requested consultations with the Government of Thailand with respect to imports of wool skirts in Category 442. This request was made on the basis of the bilateral agreement on July 27 and August 8, 1983 between the Governments of the United States and Thailand relating to trade in cotton, wool and man-made fiber textiles and textile products. The agreement provides for consultations when the orderly development of trade between the two countries may be impeded by market disruption, or the threat thereof, due to imports.

The purpose of this notice is to advise

the public that, if no solution is agreed upon in consultations between the two governments within ninety-days of the request for consultations, the Committee for the Implementation of Textile Agreements, pursuant to the terms of the bilateral agreement, may establish a prorated specific limit for the entry and withdrawal from warehouse for consumption of textile products in Category 442, produced or manufactured in Thailand and exported to the United States during the prorated twelve-month period which began on September 30, 1985 and extends through December 31, 1985.

A summary market statement concerning this category follows this notice.

The Government of the United States, pending agreement in consultations on a mutually satisfactory solution, has decided to control imports in this category during the ninety-day consultation period which began on September 30, 1985 and extends through December 28, 1985 at 3,931 dozen. In the event the level established for the ninety-day period is exceeded, such excess amounts, if they are allowed to enter, will be charged to the prorated twelve-month period described above.

The United States remains committed to finding a solution concerning this category. Should such a solution be reached in consultation with the Government of Thailand, further notice will be published in the *Federal Register*.

Anyone wishing to comment or provide data or information regarding the treatment of this category under the bilateral agreement with the Government of Thailand, or on any other aspect thereof, or to comment on domestic production or availability of textile products in this category is invited to submit such comments or information in ten copies to Mr. Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C., and may be obtained upon written request.

Further comment may be invited regarding particular comments or

information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Walter C. Lenahan,
Chairman, Committee for the Implementation
of Textile Agreements.

Thailand—Market Statement

Category 442—Wool Skirts
September 1985.

Summary and Conclusions

U.S. imports of Category 442 from Thailand were 12,500 dozens during the year ending July 1985, up 140 percent from a year earlier. Imports for the full year 1984 were 10,600 dozens, nearly four and one-half the 2,400 dozens imported in 1983.

The sharp and substantial increase of low-valued imports of Category 442 from Thailand is disrupting the U.S. market.

U.S. Production and Market

Production of Category 442 declined from 1,415,000 dozens in 1982 to 1,045,000 dozens in 1984. The market for U.S. produced and imported Category 442 also declined, but not as sharply. The U.S. producers share of the market dropped from 92 percent in 1982 to 75 percent in 1984.

U.S. Imports and Import Penetration

Imports of wool skirts increased by about 170 percent from 1982 to 1984, rising from 131,000 dozens to 353,000 dozens. Imports for the first seven months of 1985 were up 5.3 percent from the same period in 1984. The ratio of imports to domestic production increased sharply from 9.3 percent in 1982 to 33.8 percent in 1984.

October 21, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs, Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive issued to you on December 21, 1984, by the Chairman of the Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Thailand.

Effective on October 25, 1985, the directive of December 21, 1984 is hereby further amended to include an import restraint level of 3,931 dozen¹ for wool textile products in

¹ The level has not been adjusted to reflect any imports exported after September 29, 1985.

Category 442, produced or manufactured in Thailand and exported during the ninety-day period which began on September 30, 1985 and extends through December 28, 1985.

Textile products in Category 442 which have been exported to the United States prior to September 30, 1985 shall not be subject to this directive.

Textile products in Category 442 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-25388 Filed 10-23-85; 8:45 am]

BILLING CODE 3510-DR-M

Request for Public Comment on Bilateral Textile Consultations With the Government of Turkey on Category 361 (Cotton Sheets)

October 21, 1985.

On September 30, 1985, the United States Government, under Article 3 of the Arrangement Regarding International Trade in Textiles and Section 204 of the Agricultural Act of 1956 (7 U.S.C. 1854), requested the Government of Turkey to enter in to consultations concerning exports to the United States of cotton sheets in Category 361, produced or manufactured in Turkey.

The purpose of this notice is to advise that, if no solution is agreed upon in consultations between the two governments within sixty days of the date of delivery of the aforementioned note, entry and withdrawal from warehouse for consumption of cotton textile products in Category 361, produced or manufactured in Turkey and exported during the twelve-month period which began on September 30, 1985 and extends through September 29, 1986 may be restrained at a level of 189,073 numbers.

A summary market statement follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Category 361 is invited to submit such comments or information in ten copies to Mr. Walter C. Lenahan, Chairman, Committee for the

Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C., and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

Turkey—Market Statement

Category 361—Cotton Sheets

September 1985.

Summary and Conclusions

United States imports of cotton sheets from Turkey totaled 241,349 sheets (20,112 dozens) during the year ending July 1985, nearly nine times the 27,702 (2,309 dozens) imported during year ending July 1984. Imports from Turkey began in 1984 when 139,769 sheets, (11,647 dozens) were entered.

The sharp and substantial increase of low-valued imports of Category 361 from Turkey is disrupting the U.S. market.

Imports and Import Penetration

U.S. imports of Category 361 more than doubled between 1982 and 1983. In 1984, imports continued to grow, increasing 129 percent, to 703,000 dozens. During the first seven months of 1985, cotton sheet imports increased 105 percent to 497,442 dozens.

The ratio of imports to domestic production climbed sharply, from 13.4 percent in 1982 to 80.4 percent in 1984. The ratio of imports to domestic production continued to rise in 1985, reaching 90.2 percent in the first quarter, compared with 37.0 percent in the first quarter of 1984.

U.S. Production and Market Square

U.S. production of cotton sheets declined 14 percent to 874,000 dozens in 1984, after declining 7 percent in 1983.

The market for U.S. produced and imported cotton sheets has been growing since 1982, however, the U.S. producer's share of that market has been steadily declining. In 1982, the U.S. producers' share was 88.1 percent. Their share dropped to 76.8 percent in 1983 and to 55.4 percent in 1984. In the first quarter

of 1985, the domestic producer's share of the market was 52.6 percent, compared with 73.0 percent in the first 52.6 percent, compared with 73.0 percent in the first quarter of 1984.

[FR Doc. 85-25389 Filed 10-23-85; 8:45 am]

BILLING CODE 3510-DR-M

Temporary Waiver of Export Visa Requirements for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Malaysia

October 21, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on October 25, 1985. For further information contact Jane Corwin, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

On October 4, 1985 a letter dated October 1, 1985 from the Chairman of the Committee for the Implementation of Textile Agreements (CITA) to the Commissioner of Customs was published in the *Federal Register* (50 FR 40586) directing that, effective on October 15, 1985, cotton, wool and man-made fiber textile products subject to the terms of the bilateral agreement between the Governments of the United States and Malaysia, exported on and after October 15, 1985, would be required to be visaed using a new stamp revised to include the correct category and quantity. Customs was directed to deny merchandise exported before October 15, 1985 if visaed using the new stamp.

To minimize impediments to trade resulting from the change in stamps, CITA has decided to permit entry of merchandise exported from Malaysia before October 15, 1985, visaed with either the new or formerly authorized stamp, provided all other previously established visa requirements have been met. This waiver will be effective until January 1, 1986.

The letter to Customs which follows this notice amends the October 1, 1985 directive to implement the waiver.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington,
D.C. 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of October 1, 1985 which directed you to prohibit entry of specified categories of cotton, wool, and man-made fiber textiles and textile products, produced or manufactured in Malaysia for which the Government of Malaysia had not issued an appropriate export visa.

Effective on October 25, 1985, the directive of October 1, 1985 is hereby amended to permit until January 1, 1986, entry or withdrawal from warehouse for consumption in the United States of merchandise in Categories 300-369, 400-469 and 600-669, as applicable, exported before October 15, 1985, which is visaed using either the new or previously authorized visa stamp, provided all other visa requirements have been met. On and after January 1, 1986, only the new visa stamp will be accepted for merchandise exported on and after October 15, 1985.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Walter C. Lenahan,
Chairman, Committee for the Implementation
of Textile Agreements.

[FR Doc. 85-25390 Filed 10-23-85; 8:45 am]

BILLING CODE 3510-DR-M

Adjustment of Import Control Level for Certain Cotton Textile Products Produced or Manufactured in Peru

October 21, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on October 25, 1985. For further information contact Nathaniel Cohen, Trade Reference Assistant, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

The Governments of the United States and Peru have exchanged notes amending their Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of July 17, 1985 to convert the designated consultation level for cotton sheeting in Category 313 to a specific limit at 17.5 million square yards and to increase the designated consultation level

established for carded cotton yarn in Category 300 from 3 million pounds to 3.5 million pounds, for goods, produced or manufactured in Peru and exported during the agreement year which began on May 1, 1985 and extends through April 30, 1986. The letter to the Commissioner of Customs which follows this notice implements these levels.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the *Federal Register* on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Walter C. Lenahan,
Chairman, Committee for the Implementation
of Textile Agreements.
October 21, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington,
D.C. 20229

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of April 29, 1985 from the Chairman of the Committee for the Implementation of Textile Agreements concerning imports of cotton and wool textile products, produced or manufactured in Peru and exported during the twelve-month period which began on May 1, 1985 and extends through April 30, 1986.

Effective on October 25, 1985, the directive of April 29, 1985 is hereby amended to increase the restraint limits for cotton textile products in Categories 300 and 313 to the following:

Category	Adjusted 12-mo. level ¹
300	3,500,000 lbs.
313	17,500,000 sq. yds.

¹ The level has not been adjusted to reflect any imports exported after April 30, 1985.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Walter C. Lenahan,
Chairman, Committee for the Implementation
of Textile Agreements.

[FR Doc. 85-25391 Filed 10-23-85; 8:45 am]

BILLING CODE 3510-DR-M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 86-C0001]

Superior Futon Mattress Corp., d.b.a. Futon Gallery, Inc., and Gabriel Nazgimov, Individually; Provisional Acceptance of a Settlement Agreement

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional acceptance of a Settlement Agreement under the Flammable Fabrics Act.

SUMMARY: Under requirements of 16 CFR 1605.13, the Commission must publish in the *Federal Register* consent agreements which it provisionally accepts under the Flammable Fabrics Act. Published below is a provisionally-accepted Settlement Agreement and Superior Futon Mattress Corporation a corporation d/b/a Futon Gallery, Inc., et al.

DATES: Any interested person may ask the Commission not to accept this agreement by filing a written request with the Office of the Secretary, November 8, 1985.

ADDRESS: Persons wishing to comment on this Settlement Agreement should send written comments to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Stephen E. Joyce, Directorate for Compliance and Administrative Litigation, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492-6626.

SUPPLEMENTARY INFORMATION:

In the Matter of Superior Futon Mattress Corporation, a corporation, d/b/a Futon Gallery, Inc., and Gabriel Nazgimov, individually. CPSC Docket No. 86-C0001.

Complaint

Nature of Proceedings

The staff of the Consumer Product Safety Commission (Commission) believes that Superior Futon Mattress Corporation, d/b/a Futon Gallery, Inc., a corporation (Superior), Gabriel Nazgimov, individually and as an officer of the corporation, and Arthur Nazgimov, individually, (Respondents) are subject to and have violated provisions of the Federal Trade Commission Act, as amended (15 U.S.C. 41 *et seq.*) (FTCA), the Flammable Fabrics Act, as amended, (15 U.S.C. 1191 *et seq.*) (FFA), and the Standard for the Flammability of Mattresses and Mattress Pads (16 CFR Part 1632 (Standard)).

It appears to the Commission from the information available to its staff that it is in the public interest to issue this Complaint. Therefore, by virtue of the authority vested in the Commission by section 30(b) of the Consumer Product Safety Act, as amended, (15 U.S.C. 2079(b)) (CPSA), the Commission pursuant to sections 3 and 5 of the FFA, 15 U.S.C. 1192 and 1194, and section 5 of the FTCA, 15 U.S.C. 45, and in accordance with the Commission's Rules of Practice for Adjudicative Proceedings, hereby issues this Complaint and states its charges as follows:

1. Respondent Superior Futon Mattress Corporation, d/b/a Futon Gallery, Inc. (Superior) is a corporation organized and doing business under the laws of the State of New York.
2. Respondent Gabriel Nazgimov is an officer of the corporate respondent and formulates, directs, and controls the acts, practices, and policies of the corporation.
3. Respondents have their office and principal place of business located at 548 1/2 Hudson Street, New York, NY 10014.
4. Respondents have engaged in the manufacturing for sale, sale and offering for sale, in commerce, and have introduced, delivered for introduction, transported and caused to be transported in commerce, and have sold or delivered after sale or shipment in commerce, products, as the terms, "commerce" and "product," are defined in the FFA sections 2(b) and (h), 15 U.S.C. 1191 (b) and (h).
5. Respondents "products" are futons, which are "Mattresses" within the meaning of 16 CFR 1632.1 (a), because they are "tickings filled with a resilient material used alone or in combination with other products and intended or promoted for sleeping upon."
6. Mattresses must conform to the Standard for the Flammability of Mattresses FF4-72, 16 CFR Part 1632 (Standard).
7. Respondents' futons fail to conform to the requirements of the Standard in violation of section 3 of the FFA, 15 U.S.C. 1192 in that:
 - A. There was no prototype testing;
 - B. No records were maintained; and
 - C. Cigarettes ignited the mattress surface.
8. The aforesaid violative acts and practices of Respondents are unlawful and constitute unfair methods of competition and unfair and deceptive practices in commerce under the FTCA.

Relief Sought

Wherefore, the premises considered, the Commission hereby issues this

Complaint on the 17th day of October, 1985, seeking in Order to Cease and Desist future violations of the FFA.

By the Commission:
David Schmeltzer,
Associate Executive Director, Directorate for Compliance and Administrative Litigation.

Consent Order Agreement

Superior Futon Mattress Corporation, hereinafter (Superior) a corporation, d/b/a Futon Gallery, Inc., doing business under the laws of the State of New York, and GABRIEL NAZGIMOV, individually and as an officer of Superior (hereinafter Respondents), 548 1/2 Hudson Street, New York, New York 10014, enter into this Consent Order Agreement (Agreement) with the staff (staff) of the Consumer Product Safety Commission (Commission) pursuant to the procedure for Consent Order Agreements contained in § 1605.13 of the Commission's Procedures for Investigations, Inspections, and Inquiries under the Flammable Fabrics Act (FFA), 16 CFR Part 1605.

This Agreement and Order are for the sole purpose of settling allegations of the staff that Respondents sold noncomplying mattresses/futons, in violation of the Flammable Fabrics Act and the Standard, Rules, and Regulations there under as more fully set forth in the Complaint accompanying this Agreement.

Respondents and the Staff Agree:

1. The Consumer Product Safety Commission has jurisdiction in this matter under the following acts: The Flammable Fabrics Act (15 U.S.C. 1191 *et seq.*); the Federal Trade Commission Act (15 U.S.C. 41 *et seq.*); and the Consumer Product Safety Act (15 U.S.C. 2051 *et seq.*).
2. Superior Futon Mattress Corporation, d/b/a Futon Gallery, Inc., is a corporation, organized and doing business under the laws of the State of New York.
3. Superior Futon Mattress Corporation, d/b/a Futon Gallery, Inc. is engaged in the manufacture and sale of mattresses/futons with its principal place of business and address located at 548 1/2 Hudson Street, New York, N.Y. 10014.
4. Gabriel Nazgimov is President of Superior Futon Mattress Corporation, d/b/a Futon Gallery, Inc. and controls its acts, practices, and policies.
5. Respondents are now and have been engaged in one or more of the following:
 - A. The manufacture for sale, the sale, or the offering for sale, in commerce, or

the importation, delivery for introduction, transportation, in commerce, or the sale or delivery after sale or shipment in commerce, of a product, fabric, or related material which is subject to the requirements of the Flammable Fabrics Act (15 U.S.C. 1191 *et seq.*), and the Standard for the Flammability of Mattresses and Mattress Pads (FF 4-72), 16 CFR Part 1632.

B. The importation into the United States, or the manufacture for sale, the sale, or the offering for sale of a product made of fabric or related material, which has been shipped or received in commerce and which is subject to the requirements of the Flammable Fabrics Act and the Standard for the Flammability of Mattresses and Mattress Pads (FF 4-72), 16 CFR Part 1632.

6. This Agreement is for settlement purposes only, does not constitute an admission by Respondents they have violated the law, and becomes effective only upon its final acceptance by the Commission and service of the incorporated Order (hereinafter, Order) upon Respondents.

7. Respondents waive (a) all requirements for findings of fact and conclusions of law in the disposition of this matter, and (b) administrative and judicial review of the facts and proceedings. This Agreement and the Complaint accompanying the Agreement may be used in interpreting the Order.

8. Violation of the provisions of the Order may subject Respondents to a civil penalty for each such violation, as prescribed by law.

9. The Commission may disclose the terms of this consent order agreement.

10. The requirements of this Order are in addition to, and not to the exclusion of, other remedies such as criminal penalties which may be pursued under section 7 of the FFA.

11. No agreement, understanding, representation or interpretation not contained in this Agreement or Order may be used to vary or contradict the terms of the Order.

Upon acceptance of this Agreement, the Commission may issue the following Order:

Order

I

It is hereby ordered that Respondents, their successors and assigns, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, do forthwith cease and desist from selling or offering for sale, in commerce, or manufacturing

for sale, in commerce, or importing into the United States, or introducing, delivering for introduction, transporting or causing to be transported, in commerce, or selling or delivering after sale or shipment in commerce, any product, fabric or related material which fails to conform to the Standard for the Flammability of Mattresses and Mattress Pads (FF 4-72), 16 CFR Part 1632. This standard was issued, amended and continues in effect under the provisions of the Flammable Fabrics Act (FFA, 15 U.S.C. 1191 *et seq.*).

II

It is further ordered that Respondents conduct the required prototype testing of each mattress/futon design prior to production.

III

It is further ordered that Respondents prepare and maintain written records of the prototype testing for each mattress/futon design including photographs of the tested Mattresses/futons.

IV

It is further ordered that Respondents prepare and maintain a written record of the manufacturing specifications—description—of each mattress/futon prototype.

V

It is further ordered that Respondents conduct required testing or, as appropriate, obtain supplier certification to support any substitution of materials after prototype testing.

VI

It is further ordered that Respondents prepare and maintain a written record of the manufacturing specifications—descriptions—of any new ticking or tape edge material substituted for those used in the original prototype testing.

VII

It is further ordered that Respondents prepare and maintain all other records required by the standard including:

- (a) Records to support any determination that a particular material other than ticking or tape edge material did not influence ignition resistance;
- (b) Ticking classification test results or a certification from the ticking supplier;
- (c) Tape edge substitution test results;
- (d) Photographs of any mattress/futon tested for purposes of making a tape edge substitution; and

(e) Records describing the disposition of all failing or rejected prototype mattresses/futons.

VIII

It is further ordered that for a period of ten (10) years from the date this Order becomes final within the meaning of the Federal Trade Commission Act, Respondents notify the Commission at least thirty (30) days prior to any proposed change in the way Respondents do business which may affect compliance obligations arising out of this Order.

Any agreement, understanding, representation, or interpretation that is not contained in this Agreement and the incorporated Order may not be used to vary or contradict the terms of the Order subsequently issued by the Commission.

Signed this 16th day of August, 1985.

Gabriel Nazgimov,
President, Superior Futon Mattress Corporation.

Gabriel Nazgimov,
Individually.

Stephen E. Joyce,

Counsel for the Commission Staff.

By direction of the Commission, this Consent Order Agreement is provisionally accepted pursuant to 16 CFR 1605.13, and shall be placed on the public record, and the Commission shall announce provisional acceptance of the Consent Order Agreement in the Commission's Public Calendar and in the Federal Register.

So ordered by the Commission, this 17th day of October, 1985.

Sadya E. Dunn,
Secretary, Consumer Product Safety Commission.

[FR Doc. 85-23254 Filed 10-23-85; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Small ICBMs; Advisory Committee Meetings

SUMMARY: The Defense Science Board Task Force on Small ICBMs will meet in closed session on 2 and 17 December 1985 in the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the

Department of Defense. At this meeting the Task Force will continue to receive classified briefings on Small ICBMs.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92-463, as amended (5 U.S.C. App. II (1982)), it has been determined that this DSB Panel meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Dated: October 18, 1985.

Patricia H. Means,
OSD Federal Register Liaison Officer,
Department of Defense.

[FR Doc. 85-25376 Filed 10-23-85; 8:45 am]

BILLING CODE 3810-01-M

President's Blue Ribbon Commission on Defense Management; Meeting Open in Part to the Public

SUMMARY: The President's Blue Ribbon Commission on Defense Management announces a forthcoming meeting beginning at 9:00 a.m. on November 12, 1985 at 736 Jackson Place NW., Washington, DC 20503 and continuing at 9:30 a.m. on November 13, 1985.

From 9:30 a.m. to 12:00 Noon on November 13, 1985, the Commission will receive presentations from Members of Congress concerning the adequacy of the defense acquisition process, including the adequacy of the defense industrial base, current law governing Federal and Department of Defense procurement activities, departmental directives and management procedures, and the execution of acquisition responsibilities within the Military Departments. This portion of the Commission's meeting will be open to the public. Persons interested in attending the open portion of the meeting should contact Mr. Herbert E. Hetu, telephone (202) 638-0799 or (202) 395-3198, for further information about the location of this portion of the meeting.

The rest of the Commission's meeting, which will be closed to the public, will include discussion of classified matters of national security and other matters which cannot be addressed in open forum throughout. Such discussions cannot reasonably be segregated for separate open and closed sessions without defeating the effectiveness and purpose of the overall meeting. Accordingly, consistent with section 10(d) of Pub. L. 92-463, the "Federal Advisory Committee Act," and section

552b (c)(1), (c)(4), and (c)(9)(B) of Title 5, United States Code, the rest of this meeting will be closed to the public.

Agenda: The Commission will meet in open session for Congressional presentations and in closed task force, planning, and executive sessions to consider issues of defense management policy and procedure, including strategy and resource planning, acquisition execution, and personnel management.

FOR FURTHER INFORMATION CONTACT:

Mr. Herbert E. Hetu, 1201 Pennsylvania Avenue NW., Suite 700A, Washington, DC 20004. Telephone: (202) 638-0799 or (202) 395-3198.

Dated: October 21, 1985.

Patricia H. Means,

OSD Federal Register Liaison Officer,
Department of Defense.

[FR Doc. 85-25375 Filed 10-23-85; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Upgrading of Security Requirements for Army, Navy and Marine Corps

AGENCY: Department of Army, Military Traffic Management Command, DoD.

ACTION: Notice of upgrade Transportation Protective Service requirements on shipments of sensitive and protected material transported for the Departments of the Army, Navy, and the United States Marine Corps.

SUMMARY: The U.S. Army, U.S. Navy, and U.S. Marine Corps have upgraded the minimum Transportation Protective Service (TPS) requirements placed on their funded movements of explosives (Class A and B) and sensitive arms from Constant Surveillance Service to Dual Driver Protective Service. This change created a need for additional motor carriers to offer Dual Driver Protective Service for Department of Defense freight movements. Carriers desiring to offer this TPS must annotate Items 15 in a Uniform Tender of Rates and/or Charges for Transportation Services, (Optional Form 280) on file at Headquarters, Military Traffic Management Command (MTMC), Falls Church, Virginia 22041-5050.

FOR FURTHER INFORMATION CONTACT:

Betty Yanowsky (202) 756-1565 or Allen Kirby (202) 756-1149.

John O. Roach, II,

Army Liaison Officer with the Federal Register.

[FR Doc. 85-25422 Filed 10-23-85; 8:45 am]

BILLING CODE 3710-08-M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for a Proposed Maintenance Dredging Project for the Authorized Federal Channel of the Chicago River, North Branch of the Chicago River, and North Branch Canal in the City of Chicago, Cook County, IL

AGENCY: U.S. Army Corps of Engineers, Chicago District.

ACTION: Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY: 1. The study involves the proposed maintenance dredging of shoaling materials that have restricted commercial navigation in the Chicago River, North Branch of the Chicago River, and the North Branch Canal from Clark Street upstream to west North Avenue. Sediments within the authorized channel are considered heavily polluted and are PCB-contaminated (as defined under TSCA) at specific locations. Maintenance dredging disposal would be in the Chicago Area Confined Disposal Facility (CDF) located adjacent to Calumet Harbor in the City of Chicago, Illinois.

2. Alternatives to be studied in detail are:

(a) No Action
(b) Maintenance dredging of the authorized channel and deposition of the dredged sediments in the Chicago Area CDF would be under a two phase dredging and confinement program. Phase 1 of the alternative is to dredge and confine heavily polluted and PCB-contaminated sediments between Clark Street and Ogden Avenue. The Chicago Area CDF would be evaluated to determine the design's efficiency in confining PCB-contaminated sediments. Based upon the performance of the CDF during the evaluation period, phase 2 would be implemented to complete maintenance dredging upstream to west North Avenue.

3. The proposed maintenance dredging project is a continuation of maintenance dredging and confinement of shoaling materials of the Chicago River east of Clark Street as outlined in the Chicago Area Confined Disposal Facility and Maintenance Dredging Final Environmental Impact Statement. Dredging the Federal channel west of Clark Street was dropped from consideration in the EIS because of the unavailability of USEPA approved disposal site for the PCB-contaminated dredged material. Subsequently, the Chicago Area CDF has been proposed

as an alternative method of disposing PCB-contaminated sediments. Formal application of the facility as an alternative method is being made to the Regional Administrator of the USEPA. Public participation would include coordination with the U.S. Environmental Protection Agency, the State of Illinois, the U.S. Fish and Wildlife Service, and other interested parties and organizations.

4. Significant issues to be analyzed include destruction or disruption of aquatic habitat, water and sediment quality of North Branch of the Chicago River, disposal of dredged material, effluent water quality, and aesthetic effects.

5. No formal scoping meeting will be held. The scoping process has been undertaken as part of the on-going public participation and interagency coordination program.

6. The DEIS is expected to be available in March 1986.

7. Questions about the proposed action and DEIS may be directed to: David L. Combs, U.S. Army Corps of Engineers, NCCPD-S, 219 S. Dearborn Street, Chicago, Illinois 60604-1797, (312/353-7805).

Dated: October 18, 1985.

Frank R. Finch, P.E.,

LTC, Corps of Engineers, District Engineer.

[FR Doc. 85-25416 Filed 10-23-85; 8:45 am]

BILLING CODE 3710-HN-M

Department of the Navy

Chief of Naval Operations, Executive Panel Advisory Committee, Strategic Planning and the Technology Base Task Force; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Strategic Planning and the Technology Base Task Force will meet November 13-14 1985, from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to explore the relationship between Navy strategic planning process and the Technology Base. The entire agenda for the meeting will consist of discussions of key issues regarding the integration of technology management with strategic planning and requirements definition and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of

national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Lieutenant Thomas E. Arnold, Executive Secretary of the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 928, Alexandria, Virginia 22302-0268. Phone (703) 756-1205.

Dated: October 21, 1985.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve Federal Register Liaison Officer.

[FR Doc. 85-25344 Filed 10-23-85; 8:45 am]

BILLING CODE 3810-AE-M

DELAWARE RIVER BASIN COMMISSION

Commission Meetings and Public Hearings

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Tuesday, October 29, 1985 beginning at 7:00 p.m. in the Frederick the Great Room of the Holiday Inn in King of Prussia, Pennsylvania to consider the following applications.

1. *Philadelphia Electric Company (PECO) and Reading Anthracite Company (RAC) D-69-210 CP (Final): Revision No. 3.* A revised joint application by PECO and RAC to amend their July 3, 1985 application to withdraw up to 32.5 cubic feet per second (cfs) from Beechwood Pit, an abandoned strip mine pit, in New Castle Township, Schuylkill County, Pennsylvania and discharge the same quantity into the West Branch of the Schuylkill River. PECO and RAC have reduced the quantity proposed to be diverted from Beechwood Pit to 10 cfs. The proposed discharge would contain up to 1,700 milligrams/liter of total dissolved solids (TDS) and, during low flow periods, could cause more than a 33 percent increase in the TDS in the receiving waters.

PECO has requested further revision of DRBC's approved docket for the Limerick Generating Station Docket No. D-69-210 CP (Final) to allow PECO to use water from the Schuylkill River for consumptive use at Limerick up to the total combination of the quantity discharged by RAC plus the quantity transferred by reductions at the Titus and Cromby Generating Stations in

accordance with Docket No. D-69-210 CP (Final): Revision No. 2.

2. *Philadelphia Electric Company (PECO) D-69-210 CP (Final): Revision No. 4.* An application by PECO to temporarily, during 1985, revise portions of the Limerick Generating Station project as included in the Comprehensive Plan and to approve the temporary change under section 3.8 of the Compact. The proposed revision is for the withdrawal of water from the Schuylkill River for consumptive use at Limerick Generating Station Unit No. 1, when existing flow constraints would otherwise prevent such withdrawal. PECO proposes that the current flow limit, which precludes the consumptive use of Schuylkill River water whenever the flow at the Pottstown gage in Montgomery County, Pennsylvania is less than 530 cfs and one unit is operating, be reduced to 415 cfs temporarily through December 31, 1985. All other existing limitations currently in effect would remain.

Each of these applications shall be considered separately. Any public comments shall be part of a joint record to the extent relevant to both applications. The record compiled in connection with the Commission's August 26, 1985 public hearing on PECO's July 3, 1985 application shall also be incorporated into and shall be considered by the Commission as a part of the joint record on these applications. It will not be necessary to resubmit comments previously provided in order to be considered in connection with these applications. Documents relating to these applications may be examined at the Commission's offices and at the Pottstown Public Library. Preliminary dockets are available in single copies upon request. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

The Commission will hold a public hearing on Wednesday, October 30, 1985, beginning at 1:30 p.m., also in the Frederick the Great Room of the King of Prussia Holiday Inn. The hearing will be part of the Commission's regular business meeting which is open to the public.

An informal pre-meeting conference among the Commissioners and staff will be open for public observation at about 11:00 a.m. at the same location.

The subjects of the hearing will be as follows:

A. A proposal that the 1983 Water Resources Program, approved on November 30, 1983, as extended and adopted by Commission Resolution No. 84-27 as the 1984 Water Resources

Program, be extended and adopted as the 1985 Water Resources Program, in accordance with the requirements of section 13.2 of the Delaware River Basin Compact.

B. *Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or section 3.8 of the Compact:*

1. *Philadelphia District, Corps of Engineers D-70-55 CP (Revised).* A revised application for a flood control project in the Borough of Tamaqua and Walker Township in Schuylkill County, Pennsylvania. The project is intended to provide 100-year flood protection to 315 residential and commercial buildings in the Borough of Tamaqua. The buildings are affected by flooding of Wabash Creek, a tributary to the Little Schuylkill River. The project includes construction of a diversion structure and a 2,917 foot long tunnel/conduit system to convey floodwaters from Wabash Creek, upstream of the flood prone area, to the Little Schuylkill. In addition, a 56 foot high dry dam will be constructed on North Ward, a tributary to Wabash Creek.

2. *Deptford Township Municipal Utilities Authority D-82-7 CP.* A ground water withdrawal project to supply approximately 30 million gallons (mg)/30 days of water to the applicant's distribution system from proposed Well No. 7 and also to renew the approval of Well No. 6 (D-79-51 CP) which expired August 27, 1985. The total withdrawal from all wells will be 123 mg/30 days. The project is located in Deptford Township, Gloucester County, New Jersey.

3. *Borough of Dublin (Lamelza/Thompson Well) D-85-21 CP.* An application for a ground water withdrawal permit for the Lamelza/Thompson Well has been filed by the Borough of Dublin. The request for diversion of a maximum of 11,400 gallons per day (gpd) from this well (which is located in Bedminster Township) would supplement the water supply obtained from Dublin's municipal water supply wells, Nos. 1 and 2. The Lamelza well will be chlorinated and connected to the Dublin water supply distribution system. The 370 feet deep well is located approximately 50 feet beyond the Borough boundary in Bedminster Township, Bucks County, Pennsylvania in the Southeastern Pennsylvania Ground Water Protected Area.

4. *American Nickeloid Company D-85-30.* The applicant seeks approval to install and operate three filter units that are more efficient and reliable than the settling lagoons now used at its

Walnutport, Northampton County, Pennsylvania plant. Two of the proposed diatomaceous earth filter units will remove copper, zinc and chromium hydroxides from batch waste streams, while the third unit will provide final filtration of the intermittent wastewater stream from the entire manufacturing process, with an average flow of 23,500 gpd. Treated effluent will continue to be discharged to the Lehigh River.

5. *Ajax Stamping and Manufacturing, Inc. D-85-34.* Approval is sought by Ajax Stamping and Manufacturing, Inc., Collegeville, Montgomery County, Pennsylvania, to increase the discharge of treated industrial wastewater at the Lower Providence Township plant from 0.045 million gallons per day (mgd) to 0.095 mgd. The flow increase will result from the addition of a second plating line at the existing metal fabrication and electroplating plant. The existing batch treatment equipment will be used to handle the increased waste flow; no new equipment will be installed. The time duration of the batch treatment process will be unchanged as more batches per tank per week will be run. Effluent quality will be unchanged as more batches per tank per week will be run. Effluent quality will be unchanged. Discharge is to an unnamed tributary of the Perkiomen Creek.

6. *Hatfield Township Municipal Authority D-85-36 CP.* A sewage treatment project to replace the applicant's existing treatment facility in Hatfield Township, Montgomery County, Pennsylvania. The existing plant is designed to treat an average of 3.6 mgd and serves Hatfield Township, and portions of Montgomery Township. It has been determined by the Pennsylvania Department of Environmental Resources (PADER) to be hydraulically and organically overloaded. The new plant will be located next to the existing plant and will be designed to remove 94 percent BOD₅ (summer), 93 percent TSS and nutrients from an average design waste flow of 6.43 mgd. It will provide service to Hatfield Township, portions of Montgomery Township, and Hatfield Borough, through the year 2005. Discharge will continue to the Neshaminy Creek in Hatfield Township.

7. *Exton Development, Ltd. D-85-39.* An application for approval of a domestic wastewater treatment system utilizing spray irrigation to serve the Oaklands Industrial Park in West Whiteland Township, Chester County, Pennsylvania. The system will be constructed in two phases with an ultimate design flow of 100,000 gpd. Phase I will treat 35,000 gpd using

extended aeration followed by lagoon storage, disinfection and spray irrigation over a portion of the 21 acre spray irrigation site. Phase II will utilize an aerated treatment lagoon and a storage/polishing lagoon prior to spray irrigation. The secondarily treated, disinfected effluent will be applied at a rate of one to two inches per acre per week from May through October and at half that rate from November through April. The site drains to Valley Creek, a tributary of Brandywine Creek.

8. *Lower Bucks County Joint Municipal Authority D-85-53 CP.* Approval is sought for additions and modifications to deteriorated sludge processing equipment and installation of a new dissolved air flotation unit at the Levittown Sewage Treatment Plant. The existing anaerobic digesters will be rehabilitated, and a dewatering building will be constructed to house new belt filter presses. The dewatered filter cake (44.4 cubic yards per day) will be disposed of in the GROVS landfill in accordance with an existing PADER permit. The treatment plant serves Bristol Township, Bucks County, Pennsylvania. Treated effluent will continue to discharge into Water Quality Zone 2 at RM 122.1 of the Delaware River.

9. *City of Lewes Board of Public Works D-85-54 CP.* An application to replace Well Nos. 4 and 5 with Well Nos. 4A and 5A, with no increase in the total withdrawal allocation from the applicant's five wells of 60 mg/30 days, as previously included in the Comprehensive Plan by Docket No. D-82-29 CP. The project is located in the City of Lewes, Sussex County, Delaware.

10. *Yates Industries, Inc. D-85-66.* An industrial waste treatment plant modification at the applicant's copper foil manufacturing facility in the Township of Bordentown, Burlington County, New Jersey. NJDEP is requiring closure of existing surface impoundments Nos. 1, 2 and 3. Yates Industries, Inc. has elected to replace Lagoon No. 1 with three 100,000 gallon storage tanks and will install a clarifier overflow treatment system to replace Lagoon Nos. 2 and 3. The waste treatment plant discharge of 0.40 mgd will continue to Mile Hollow Brook at River Mile 128.4-0.8-0.6 in Zone 2 of the Delaware River Basin.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact David B. Everett. Persons wishing to testify at this hearing are

requested to register with the Secretary prior to the hearing.

Susan M. Weisman,

Secretary.

October 11, 1985.

[FR Doc. 85-25470 Filed 10-23-85; 8:45 am]

BILLING CODE 9360-01-M

DEPARTMENT OF EDUCATION

National Advisory Committee on Accreditation and Institutional Eligibility; Public Meeting

AGENCY: Department of Education.

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a public meeting of the National Advisory Committee on Accreditation and Institutional Eligibility. It also describes the functions of the Committee. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of its opportunity to attend and to participate.

DATES: November 18, 1985, 9:00 a.m. to 5:00 p.m. and November 19, 8:30 a.m. to 3:00 p.m. local time. Requests for oral presentations before the Committee must be received on or before November 8, 1985. Written comments may be submitted at any time prior to the meeting and will be considered by the Advisory Committee.

ADDRESS: Barnard Auditorium, Horace Mann Learning Center, 400 Maryland Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Morris L. Brown, Director, Division of Eligibility and Agency Evaluation, Office of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 3030, ROB-3), Washington, DC 20202 (202/245-9703).

SUPPLEMENTARY INFORMATION: The National Advisory Committee on Accreditation and Institutional Eligibility is authorized by section 1205 of the Higher Education Act as amended by Pub. L. 96-374 (20 U.S.C. 1145). The Committee advises the Secretary of Education regarding his responsibility to publish a list of nationally recognized accrediting agencies and associations. State agencies recognized for the approval of public postsecondary vocational education, and State agencies recognized for the approval of nurse education.

The Committee also advises the Secretary of Education regarding policy affecting both recognition of accrediting

and approval bodies, and institutional eligibility for participation in Federal funding programs. The meeting on November 18-19 will be open to the public. The meeting will be held at the Barnard Auditorium, Horace Mann Learning Center, 400 Maryland Avenue, SW., Washington, DC. The Advisory Committee will review petitions and interim reports by the following accrediting agencies relative to continued recognition by the Secretary of Education. The Committee will also hear presentations by representatives of these petitioning agencies and interested third parties. The agencies having petitions and interim reports pending before the Committee are:

Petitions for Recognition as Nationally Recognized Accrediting Agencies and Associations

A. Petitions for Renewal of Recognition
Association of Independent Colleges and Schools, Accrediting Commission
Middle States Association of Colleges and Schools, Commission on Higher Education

New York State Board of Regents
Southern Association of Colleges and Schools, Commission on Colleges

B. Interim Reports

American Assembly of Collegiate Schools of Business, Accreditation Council

Council on Education for Public Health

C. Show Cause Why the Agency Should Not Be Removed From the Secretary's List of Nationally Recognized Accrediting Agencies

Foundation for Interior Design
Education Research, Committee on Accreditation (graduate programs)

Petitions for Recognition as State Agencies for the Approval of Public Postsecondary Vocational Education

A. Petitions for Renewal of Recognition

Minnesota State Board for Vocational-Technical Education
New York State Board of Regents

B. Interim Reports

Office of the Superintendent of Public Instruction, State of Washington
Oklahoma State Board of Vocational and Technical Education
Oklahoma State Regents for Higher Education

Puerto Rico State Agency for the Approval of Public Postsecondary Vocational/Technical Education

Petitions for Recognition as State Agencies for the Approval of Nurse Education

A. Petitions for Renewal of Recognition
Missouri State Board of Nursing
New Hampshire Board of Nursing
Education and Nurse Registration
New York State Board of Regents (Nursing Education Unit)

B. Request for Voluntary Withdrawal of Recognition

West Virginia Board of Examiners for Registered Nurses

Requests for oral presentations before the Committee should be submitted in writing to Morris L. Brown (address above). Requests should include the names of all persons seeking an appearance, the organization they represent, and the purpose for which the presentation is requested. Requests should be received on or before November 8, 1985. Time constraints may limit oral presentations. However, all written materials will be considered by the Advisory Committee.

A report will be made of the proceedings of the meeting and will be available for public inspection at the Office of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue, SW (Room 3030, ROB-3), Washington, DC, from the hours of 8:00 a.m. to 4:30 p.m., Monday through Friday.

Signed at Washington, D.C., on October 18, 1985.

Kenneth D. Whitehead,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 85-25314 Filed 10-23-85; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Office of Assistant Secretary for International Affairs and Energy Emergencies

Atomic Energy Agreements; Proposed Subsequent Arrangements; European Atomic Energy Community

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of proposed "subsequent arrangements" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangements to be carried out under the above mentioned

agreement involves approval of the following sales:

Contract Number S-EU-864, to the Joint Research Center, Karlsruhe, the Federal Republic of Germany, 0.004 grams of uranium, enriched to 33% in the isotope U-235, for use as standard reference material.

Contract Number S-EU-865, to Fabbirazioni Nucleari SPA, Milan, Italy, 1.0006 grams of uranium, enriched to 3% in the isotope U-235, for use as standard reference material.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that these subsequent arrangements will not be inimical to the common defense and security.

These subsequent arrangements will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: October 18, 1985.

For the Department of Energy.

George J. Bradley, Jr.,

Acting Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 85-25327 Filed 10-23-85; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

Final Consent Order With Enstar Corp.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Final Action on Proposed Consent Order.

SUMMARY: The Economic Regulatory Administration (ERA) has determined that a proposed Consent Order between the Department of Energy (DOE) and Enstar Corporation (Enstar) shall be made a final order of the DOE. The Consent Order resolves issues of compliance by McAlester Fuel Company (McAlester), which became part of Enstar in 1983, with the federal petroleum price and allocation regulations concerning the production and sale of crude oil for the period June 1979 through December 1980. Enstar will pay to the DOE the sum of \$3,000,000 within 10 days of publication of this notice, and DOE will deposit these funds in a suitable account for appropriate disposition. The decision to make the Enstar Consent Order final was made after a review of all written comments received. The Consent Order is effective as a final order of the DOE on the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Edward P. Levy, Office of Special

Counsel (RG-13), Economic Regulatory Administration, 1000 Independence Avenue, S.W., Washington, D.C. 20585. (202) 252-4945.

SUPPLEMENTARY INFORMATION:

- I. Introduction
- II. Comments Received
- III. Decision

I. Introduction

ERA previously issued a notice announcing a proposed consent order between DOE and Enstar which would resolve matters relating to McAlester's compliance with the federal petroleum price and allocation regulations pertinent to the production and sale of crude oil for the period June 1979 through December 1980. (50 FR 33819, August 21, 1985). The proposed consent order requires Enstar to pay \$3,000,000 within ten days of the effective date of the Consent Order.

The notice solicited written comments from the public relating to the terms and conditions of the settlement.

II. Comments Received

ERA received two comments, which addressed the question of the ultimate disposition of the funds to be paid by Enstar pursuant to the settlement, but which did not question the basis of the settlement or the adequacy of the settlement amount. Comments were received from the following: Department of Commerce, State of Indiana, Attorneys General of the States of Arkansas, Delaware, Iowa, Louisiana, North Dakota, Rhode Island, and West Virginia.

The two comments, although formulated differently, and differing in the nature and amount of supporting analysis, are both devoted exclusively to establishing the proposition that monies received under the Enstar Consent Order that could not be paid to parties injured by alleged overcharges should be paid to State governments, and should not be deposited in the U.S. Treasury.

During the period covered by this Consent Order the violations allegedly committed by McAlester related to the miscertification of its crude oil. Such violations resulted in cost increases that were distributed among all refiners by the entitlements program and the refiners could then pass the overcharges on to others. See *United States v. Exxon Corp.*, F.2d—, Slip op. at 110-112 (TECA, July 1, 1985) (Nos. 91 et seq.).

The DOE's Office of Hearings and Appeals in a report to the District Court for the District of Kansas in *In re: the Department of Energy Stripper Well Litigation*, MDL No. 378, determined that where alleged crude oil violations

involve such crude oil miscertification, the resulting harm cannot be traced to specific customers. As explained by the DOE in an accompanying Statement of Restitutionary Policy:

Essentially, OHA concluded that direct purchasers (as such) generally did not absorb the overcharges because they were reimbursed by the entitlements programs. Tracing of overcharges is impossible in view of the spreading effect of the entitlements program, the fungibility of refiner costs and the consequent inability of firms and OHA to determine which costs were passed through and which, if any, were retained, and the high proportion of cost passthrough, among other factors.

OHA's finding that it is impossible to trace crude oil cost increases that were equalized by the entitlements program... is consistent with the conclusions of two district courts that have previously determined that the harm resulting from crude oil miscertifications cannot be traced. 50 FR 27400 (July 2, 1985).

DOE then examined the possible use of econometric modeling methods to estimate the extent to which overcharges were passed through at the various distribution levels within the industry. With regard to this indirect methodology, DOE concluded:

It is too inexact in determining injury to particular classes of claimants and yields no conclusions concerning the injury to individuals within any class. The governmental costs in resources and, more importantly, societal costs in years of continued litigation prior to distribution are unacceptably high. *Id.* at 27402.

The comments on the Enstar Consent Order appear to assume that DOE will distribute, or attempt to distribute, funds received under the Consent Order to parties injured by McAlester's alleged overcharges. However, as discussed above, it is impossible to determine which persons were ultimately injured by crude oil miscertifications. Therefore, DOE will not attempt to make such a determination here, and the funds received from Enstar pursuant to the Consent Order will not be the subject of a Subpart V petition and proceeding.

DOE's Statement of Policy also addressed the question of how to effect indirect restitution where refunds to individual injured claimants are not feasible. The policy statement provides that the ERA will retain the monies received in an escrow account for a reasonable time to allow Congress an opportunity to determine an appropriate disposition of the funds. If Congress does not enact legislation within a reasonable time, the DOE will transfer the funds to the general fund of the U.S. Treasury. The Policy Statement explains that this is preferable to further *ad hoc* payments to the states because:

[T]he states, as a result of the decisions in *Exxon* and *Sutton*, will receive more than two billion dollars for use in certain federally-established energy programs. The Department of Energy, which is responsible for administering and overseeing most of these programs at the federal level, has concluded that the states cannot make effective use of additional monies (beyond those appropriated by Congress and awarded by the *Exxon* and *Sutton* courts) for these programs at this time. *supra*, at 27402.

Because the terms of the settlement are consistent with the foregoing action, ERA has determined to make the Consent Order final.

III. Decision

Pursuant to 10 CFR 205.199j, the Consent Order between Enstar and DOE shall become a final order of the DOE on the date of publication of this notice in the Federal Register.

Issued in Washington, D.C. on October 9, 1985.

Milton C. Lorenz,
Special Counsel, Economic Regulatory Administration.

[FR Doc. 85-25398 Filed 10-23-85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. EL86-4-000]

New England Power Co.; Petition for Waiver

October 18, 1985.

Take notice that on October 17, 1985, the new England Power Company (NEP or Company), the Towns of Norwood, Merrimac and Groveland, Massachusetts, the Attorneys General of Massachusetts and Rhode Island, the Department of Public Utilities, and the New Hampshire Public Utilities Commission ("Petitioners") jointly filed a petition for temporary waiver of the Commission's regulations governing fuel costs and purchased economic power adjustment clauses (FACs).

Petitioners request waiver of these regulations to the extent that they require adjustments related to fuel and purchased economic power costs on a current basis. Specifically, Petitioners seek permission to defer billing of costs for replacement power related to an outage of NEP's Brayton Point Unit 3 coal-fired generating unit. Petitioners request that billing of these costs be deferred because NEP believes that a substantial portion of these costs will be covered by insurance. Petitioners propose that replacement power costs believed to be covered by insurance be

deferred until insurance proceeds are recovered and credited to this deferral.

Petitioners seek expedited considerations of their request so that, if granted, the waiver may have immediate effect as well as allow retroactive readjustment of NEP's FAC billings for replacement power costs already flowed through the FAC and believed to be covered under NEP's insurance.

Any person desiring to be heard or to protest said petition should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC, 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 28, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 85-25322 Filed 10-23-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP86-9-000 et al.]

Natural Gas Certificate Filings; Northwest Central Pipeline Corp. et al.

October 17, 1985.

Take notice that the following filings have been made with the Commission:

1. Northwest Central Pipeline Corporation

[Docket No. CP86-9-000]

Take notice that on October 3, 1985, Northwest Central Pipeline Corporation (Applicant), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP86-9-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a new delivery point for the sale and delivery of natural gas to The Kansas Power and Light Company (KPL Gas Service) in Crawford County, Kansas, under the certificate issued in Docket No. CP82-479-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Applicant proposes to construct and operate a new delivery point to KPL Gas

Service, an existing customer, for the sale of natural gas to domestic customers in an unincorporated community near Radley, Crawford County, Kansas. Applicant states that the projected volume of gas to be delivered through the proposed facilities would be 26 Mcf on a peak day in the first year of service, increasing to 32 Mcf per day in the fifth year. The estimated cost of the proposed facilities is \$7,210, which would be paid from treasury cash, it is explained.

Applicant indicates that the proposed new delivery point is not prohibited by an existing tariff and that it has sufficient capacity to render this service without detriment or disadvantage to its other customers.

Comment date: December 2, 1985, in accordance with Standard Paragraph G at the end of this notice.

2. Arkla Energy Resources, a division of Arkla, Inc.

[Docket No. CP85-909-000]

Take notice that on September 25, 1985, Arkla Energy Resources, a division of Arkla, Inc. (Arkla), P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP85-909-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a sales tap and related jurisdictional facilities necessary to enable Arkla to deliver gas from one of its jurisdictional pipelines to 33 consumers served by Arkansas Louisiana Gas Company, a division of Arkla, Inc. (ALG) under the certificate issued in Docket Nos. CP82-384-000 and CP82-384-001 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Arkla proposes to construct and operate a sales tap on its Line B in Faulkner County, Arkansas, to enable Arkla to deliver gas to 33 domestic customers who it is estimated would use approximately 33 Mcf on a peak day and 3,069 Mcf per year for domestic purposes.

Arkla states that this would be a routine delivery of gas to customers served by ALG. The gas will be delivered from Arkla's general system supply, which it is stated is adequate to provide the service.

Comment date: December 2, 1985, in accordance with Standard Paragraph G at the end of this notice.

3. Arkla Energy Resources, a division of Arkla, Inc.

[Docket No. CP85-919-000]

Take notice that on September 30, 1985, Arkla Energy Resources, a division of Arkla, Inc. (Arkla), P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP85-919-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a sales tap and related jurisdictional facilities necessary to enable it to deliver gas from one of its jurisdictional pipelines to one or more consumers served by Arkansas Louisiana Gas Company, a division of Arkla, Inc., under the certificate issued in Docket Nos. CP82-384-000 and CP82-384-001 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Arkla states that it proposes to construct and operate a sales tap on its Line R in Caddo Parish, Louisiana, in order to enable Arkla to deliver gas to one commercial customer, who it is estimated would use approximately 7,215 Mcf of gas per year and about 19.7 on a peak day for commercial purposes.

Arkla states that this would be a routine delivery of gas to a customer served by Arkansas Louisiana Gas Company. The gas would be delivered from Arkla's general system supply, which it is stated is adequate to provide the service. It is further stated that the rates to be charged are on file with the Louisiana Public Service Commission. It is asserted that the jurisdictional facilities involved would cost approximately \$13,039 to install.

Comment date: December 2, 1985, in accordance with Standard Paragraph G at the end of this notice.

4. Colorado Interstate Gas Company

[Docket No. CP85-912-000]

Take notice that on September 25, 1985, A Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP85-912-000 an application pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of gas for the Public Service Company of Colorado (PSCo) and for permission and approval to abandon such transportation service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

CIG states that PSCo has requested transportation service for up to 20,000 Mcf of gas per day to be delivered by Williston Basin Interstate Pipeline Company to CIG for PSCo's account at existing interconnections in Wyoming. CIG proposes to redeliver thermally equivalent volumes less fuel gas and unaccounted-for gas volumes to PSCo at an existing interconnection in Denver County, Colorado. Such transportation would be provided on an interruptible basis using existing facilities. CIG states that such transportation service would continue for a term of two years commencing with the date of first delivery of gas.

CIG further requests authority to add and delete delivery points to and from its system and to file on or about January 31 of each year tariff revisions as necessary to keep the Commission informed of any delivery point changes.

Comment date: November 7, 1985, in accordance with Standard Paragraph F at the end of this notice.

5. The Inland Gas Company, Inc.

[Docket No. CP85-918-000]

Take notice that on September 30, 1985, The Inland Gas Company, Inc. (Inland), 340-17th Street, Ashland, Kentucky 41101, filed in Docket No. CP85-918-000 an application pursuant to section 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities to establish a point of delivery to United Parcel Service (UPS), all as more fully set forth in the application on file with the Commission and open for public inspection.

Inland proposes to construct and operate measuring and regulating facilities in Boyd County, Kentucky, at an estimated cost of \$6,150, in order to establish a point of delivery to UPS, a new direct sale customer. Inland indicates that service to UPS would be for space heating requiring approximately 10 Mcf of gas per day.

Inland states that UPS is constructing a parcel delivery center, that would employ approximately forty people, in Boyd County, Kentucky, which would require the requested gas service.

Comment date: November 7, 1985, in accordance with Standard Paragraph F at the end of this notice.

6. Trunkline Gas Company

[Docket No. CP85-914-000]

Take notice that on September 26, 1985, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP85-

914-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas on behalf of Consolidated Gas Transmission Corporation (Consolidated), all as more fully set forth in the application on file with the Commission and open to public inspection.

It is stated that pursuant to a transportation agreement between Trunkline and Consolidated dated November 28, 1984, Trunkline has agreed to transport up to 12,000 Mcf of natural gas per day on behalf of Consolidated. It is stated that Trunkline proposes to transport 8,000 Mcf of natural gas per day on a firm basis and 4,000 Mcf of natural gas per day on an interruptible basis. Trunkline would receive volumes for Consolidated's account at an existing point of interconnection between trunkline and Consolidated on Trunkline's platform in South Timbalier Block 72, offshore Louisiana. Trunkline would deliver for consolidated's account to Transcontinental Gas Pipe Line Corporation in Beauregard Parish, Louisiana, and/or to the onshore terminus of U-T Offshore System in Cameron Parish, Louisiana. It is stated that for the transportation service, Consolidated would pay a unit rate of 8.22 cents per Mcf for interruptible service and a monthly demand charge of \$20,000 for firm service.

Comment date: November 7, 1985, in accordance with Standard Paragraph F at the end of this notice.

7. Northwest Pipeline Corporation

[Docket No. CP85-920-000]

Take notice that on September 30, 1985, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP85-920-000 an application pursuant to section 7(c) of the Natural Gas Act for a limited-term blanket certificate of public convenience and necessity authorizing the discretionary off-system sale of Canadian natural gas in interstate commerce to various purchasers serving markets outside of Northwest's traditional market area, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is said that Northwest has entered into an agreement with its Canadian supplier, Westcoast Transmission Company, Limited (Westcoast), for the purpose of off-system resales at volumes and prices to be agreed upon by Northwest and Westcoast 10 days prior to the month in which such sales are to be made. Northwest states that the

subject volumes would be part of the previously authorized import volumes which are currently in excess of amounts required by Northwest to serve its existing markets. Northwest explains that it would enter into short-term discretionary sales agreements and interruptible transportation agreements with off-system purchasers to cover the resale and transportation of natural gas purchased and imported from Westcoast.

Northwest states that the subject volumes would be purchased and imported at Sumas, Washington, and resold at that import point at the price paid by Northwest to Westcoast. Northwest then would transport the subject gas for the purchasers from Sumas to any of Northwest's existing off-system delivery points at El Paso Natural Gas Company near Ignacio, Colorado, or to Colorado Interstate Gas Company near Green River, Wyoming. Northwest states that its transportation service would be provided on a self-implementing basis pursuant to applicable Commission Regulations and would be charged for at the interruptible off-system transportation rate set forth on Sheet 2.1 of Volume 1 of Northwest's FERC Gas Tariff. Such rate is currently 6.77 cents per million Btu per hundred miles, up to a maximum rate of 27.08 cents per million BTU, plus fuel reimbursement equivalent to 1.1% of the volumes received for transportation and a G.R.I. charge of 1.18 cents per million Btu.

Northwest proposes that the requested blanket certificate authority be granted for a limited term coincident with the term of Northwest's October 1, 1984, Westcoast agreement and any extension thereof. Said agreement currently is scheduled to expire January 31, 1986, but is expected to be extended further, it is asserted.

Northwest asserts that its proposed off-system sales would be compensatory, non-discriminatory, would result in a net economic benefit to Northwest, would facilitate the favorable renegotiations of its long-term Westcoast agreements and would be consistent with Department of Energy import policy goals. Therefore, Northwest asserts that the proposal would serve the public convenience and necessity and should be expeditiously authorized so that full advantage of the associated benefits would be achieved.

Comment date: November 7, 1985, in accordance with Standard Paragraph F at the end of this notice.

8. Texas Eastern Transmission Corporation

[Docket No. CP85-895-000]

Take notice that, on September 20, 1985, Texas Eastern Transmission Corporation (Applicant), P.O. Box 2521, Houston, Texas 77252, filed in Docket No. CP85-895-000 an application pursuant to section 3 of the Natural Gas Act for authorization to import quantities of natural gas to be purchased from ProGas Limited (ProGas) in accordance with the agreement between ProGas and Applicant dated August 12, 1985 (Agreement), and to track, on an as-billed basis, the price of prices of the gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant seeks authorization to import up to 51,000 Mcf of natural gas per day (with allowable delivery variations) to be purchased from ProGas at the Canadian-United States border near Niagara Falls, Ontario. Under the Applicant-termed market competitive pricing and related provisions contained in the Agreement and at the price or prices determined pursuant thereto for a term of twelve years beginning November 1, 1988, and ending October 31, 2002, and for an additional period of one year to take quantities of gas paid for but not taken. Applicant also seeks authorization to track, on a current as-billed basis, the price or prices of the imported gas determined pursuant to provisions of the Agreement.

Applicant states that this proposed importation of 51,000 Mcf of natural gas per day replaces Applicant's proposal in Docket No. CP82-46 to import 51,000 Mcf of natural gas per day at the Niagara Falls delivery point to be purchased from Pan-Alberta Gas Ltd. Applicant states further that it is withdrawing its portion of the joint application in Docket No. CP82-46 concurrently with the filing of this application. Thus, Applicant avers, the total quantity of natural gas Applicant proposes to import at the Niagara Falls delivery point, for transportation in the United States by the pipeline facilities proposed by Niagara Interstate Pipeline System in Docket No. CP83-170 and by the pipeline facilities proposed by Applicant in Docket No. CP82-446, remains at 151,000 Mcf per day.

Applicant asserts that the initial base prices under the Agreement consisted, as of February 1, 1985, of a monthly demand charge of \$28.8958 (U.S.) for each Mcf of daily contract quantity and a commodity charge of \$2.55 per million Btu (U.S.), which resulted at that time in a 100 percent load factor border price of

\$3.50 per million Btu (U.S.). The pricing provisions, Applicant continued, provide for adjustments in the commodity charge to reflect changes in the average price of Number 2 heating oil and Number 6 fuel oil competing in Applicant's markets. Applicant pointed out that the demand charge changes with changes in the fixed transportation and processing costs; however, when the demand charges are adjusted, the commodity charge is adjusted by an equivalent amount in the opposite direction.

To assure that the price of the imported gas would remain competitive in its markets throughout the term of the Agreement, Applicant affirms the Agreement provides that the price and pricing provisions may be renegotiated each year, if necessary, in order to be comparable to the price of major energy sources, including natural gas, competing in Applicant's markets. Also, Applicant declares that the price and pricing provisions may be renegotiated in the event Applicant makes a new purchased gas adjustment filing in which its average gas purchase cost varies up or down by more than 5 percent.

Applicant states that the minimum annual quantity of natural gas that Applicant is required to take, or pay for if not taken, is 60 percent of its annual purchase volumes. Applicant affirms its agreement to purchase annual volumes of gas on an equitable basis with its purchases of other comparably priced gas available and to purchase, during the seven summer months, not less than 38 percent of the volumes purchased during each contract year.

Comment date: November 7, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

9. Tennessee Gas Pipeline Company, a Division of Tenneco Inc., Producer-Suppliers of Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

[Docket No. CP83-502-026]

Take notice that on October 7, 1985, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP83-502-026 a petition to amend the order issued December 20, 1983, in Docket No. CP83-502-000 pursuant to sections 7(b) and 7(c) of the Natural Gas Act, on its own behalf and on behalf of its producer-suppliers, so as to extend to the earlier of (1) February 1, 1986, or (2) the date on which a final rule is issued and in effect in Docket No. RM85-1-000 (including any period of time during which the Final Rule in Docket No. RM85-1-000

may be stayed by the Commission or reviewing courts) the term of the certificate and abandonment authorizations and to modify the terms and conditions of the authorizations, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Tennessee states that it undertook its first TEMPRO transaction in February 1985, pursuant to the terms and conditions of the orders of the Commission issued September 26, 1984, and December 21, 1984, imposing uniform conditions on all special marketing programs (SMP). By the October 31, 1985, expiration date for all SMP's, Tennessee projects that TEMPRO would have supplied a total of 11,800,000 Mcf of low-cost gas to Tennessee's customers (both captive and partial requirements) and would have achieved \$40.3 million in take-or-pay relief with Tennessee's producer-suppliers. It is indicated that the program has thus been very successful in achieving its goals of providing low-cost gas supplies to Tennessee's customers and mitigating Tennessee's take-or-pay liabilities to its producer-suppliers.

It is stated that unless extended by the Commission, TEMPRO would expire at a time when Tennessee most needs a SMP to move low-cost gas supplies to its customers. Specifically, as a result of the Commission's decision in Opinion No. 240-A that Tennessee increase its gas rates for the period, July 1, 1985, to December 31, 1985, to recover \$141 million in unrecovered purchased gas costs, Tennessee states that it was compelled to make a compliance filing on September 9, 1985, in Docket No. TA85-2-9 reflecting (1) a \$1.2532 per dt equivalent surcharge necessary to amortize the Account No. 191 balance over six months and (2) an increase in Tennessee's weighted average cost of gas from \$2.38 per dt to \$3.17 per dt (not including the surcharge). Tennessee states that its sales have fallen drastically since the date of the compliance filing. It is indicated that total sales for each day from September 1, 1985, to September 31, 1985, are compared to total sales for each day during the corresponding time period in September 1984, and that these are the lowest daily volumes that Tennessee has sold in decades. Tennessee states that its current projections for October indicate no significant improvement.

It is stated that this minimal level of sales means that the brunt of the increased gas rates is being felt by Tennessee's captive customers who are

unable to switch to other suppliers. Tennessee states that these customers would benefit substantially from the lower cost gas supplies that could be made available from the proposed extension of TEMPRO and that the availability of TEMPRO supplies might also enable Tennessee to regain some of its partial requirements customer load and spread its costs among a larger number of customers.

Tennessee states that the drastic reduction in sales that it is now experiencing is exacerbating an already serious level of take-or-pay liability to its producer-suppliers. Tennessee projects that during the period, January 1985 through July 1985, its total takes from producers were 135,200,000 Mcf below take-or-pay requirements. Tennessee indicates that when the dollar value of these additional take-or-pay volumes is added to the invoiced take-or-pay liability of \$455.4 million as of December 31, 1984, it is apparent that additional increases in the amount of take-or-pay liabilities must be avoided to the extent possible. Tennessee further states that an extension of TEMPRO as modified herein is one of the necessary marketing tools for avoiding additional take-or-pay liabilities.

Tennessee states that on August 6, 1985, the United States Court of Appeals for the District of Columbia Circuit found the September 26, 1984, and December 21, 1984, orders extending all SMP's on uniform terms and conditions to be deficient due to the Commission's failure "to set forth a reasonable basis for its decision to exclude 'captive customers' from eligibility to purchase the cheaper released gas." Tennessee indicates that rather than vacate the orders, the Court decided to allow them to remain in effect until their scheduled expiration date of October 31, 1985, but did state that, "If the Commission wishes to retain discriminatory SMP's in some form after October 31, we trust that it will do so only if it can demonstrate that the petitioner's [sic] concerns are unfounded or are outweighed by other relevant considerations."

Tennessee proposes to modify the terms and conditions of TEMPRO to eliminate the discrimination which the Court found objectionable by expanding the eligible markets to include 100 percent of Tennessee's core market customers.

Tennessee states that this would be accomplished by amending Ordering Paragraph (M)(a) of the September 26, 1984, TEMPRO order to read as follows:

(a) Any firm sales customer of a releasing pipeline may nominate up to 100 percent of

its monthly and annual firm contractual entitlements with that pipeline to be purchased for its system supply to be supplied from the SMP into which the gas is released.

Tennessee states that with this modification, there would be no exclusion of captive customers from eligibility to purchase the cheaper release gas.

Tennessee also proposes to amend the TEMPRO authorization to include any end-user, whether or not a new or marginal load, as an eligible market. It is indicated that this would allow Tennessee to continue to transport gas to any end-user on a self-implementing basis when the blanket certificate program established in Order Nos. 234-B and 234-C, insofar as it allows interstate pipelines to transport gas on behalf of any end user, expires on October 31, 1985.

Comment date: November 7, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

10. Columbia Gulf Transmission Company

[Docket No. CP78-58-002]

Take notice that on September 20, 1985, Columbia Gulf Transmission Company (Petitioner), P.O. Box 683, Houston, Texas 77001, filed in Docket No. CP78-58-002 a petition to amend the order issued January 26, 1978, in Docket No. CP78-58 so as to authorize the transportation and redelivery of natural gas by Petitioner to Consolidated Gas Transmission Corporation (Consolidated) on a thermally equivalent basis, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

It is stated that by the order issued January 26, 1978, Petitioner was authorized to transport for Consolidated, pursuant to a gas transportation agreement dated October 24, 1977 (agreement), a contract demand volume of 65,000 Mcf on natural gas per day produced in the West Cameron area Block 605 and Vermilion area Block 267, offshore Louisiana. It is explained that Consolidated transports its Vermilion Block 267 gas to the Blue Water Project and transports its West Cameron Block 605 gas to an under interconnection with Petitioner's 30-inch pipeline in West Cameron Block 601. Petitioner then transports this gas to the Blue Water Project in Vermilion Block 245, it is indicated. Petitioner states that it transports the Vermilion Block 267 gas and West Cameron Block 605 gas for Consolidated through its capacity entitlement in the Blue Water Project

and redelivers to Consolidated at its western terminus At Egan, Acadia Parish, Louisiana.

Pursuant to an amendment dated August 13, 1985, to the agreement, Petitioner and Consolidated have agreed to provide for the redelivery of gas on a thermally equivalent basis rather than a volumetric basis, it is explained.

Comment date: November 7, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to

§ 157.205 of the Regulations under the Natural Gas Act (18 CFR 157k.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-25321 Filed 10-23-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP84-79-006]

Compliance Filing; Gas Gathering Corp.

October 21, 1985.

Take notice that on October 11, 1985, Gas Gathering Corporation ("GGC") submitted for filing the following tariff sheets:

First Revised Volume No. 1, Original Sheet Nos. 1-28

First Revised Volume No. 2, Original Sheet Nos. 1-43

The proposed effective date for all of the tariff sheets except those pertaining to Rate Schedule T-1, is November 1, 1984, the date established under the terms of the settlement agreement. The proposed effective date of the tariff sheets pertaining to Rate Schedule T-1 is November 11, 1985.

GGC states that its filing is in compliance with the Commission's Letter Order, dated February 21, 1985 in *Gas Gathering Corporation*, Docket No. RP84-79-000 (30 FERC Par. 61,209).

In addition, GGC's filing includes a new Rate Schedule T-1 to its First Revised Volume No. 1. That rate schedule provides for the transportation of natural gas pursuant to GGC's blanket authority issued by the Commission under section 7 of the Natural Gas Act and Section 311 of the Natural Gas Policy Act of 1978. The rate to be charged under Rate Schedule T-1 is a rate equivalent to the gathering component of GGC's Rate Schedule X-2.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before October 28, 1985. Protests will be

considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-25362 Filed 10-23-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-2-41-000, 001]

Change in Rates Pursuant to Purchased Gas Cost Adjustment; Southwest Gas Corp.

October 21, 1985

Take notice that Southwest Gas Corporation (Southwest) on October 15, 1985, tendered for filing Twenty-eighth Revised Sheet No. 10 pursuant to section 9, Purchased Gas Adjustment Clause (PGAC), of the General Terms and Conditions contained in its FERC Gas Tariff, Original Volume No. 1. The purpose of said filing is to reflect a decrease in rates occasioned by a decrease in rates from Southwest's northern Nevada sole supplier of gas, Northwest Pipeline Corporation, effective November 1, 1985. The proposed effective date for Southwest's proposed decrease in rates is November 1, 1985.

Southwest states that a copy of this filing has been mailed to the Nevada Public Service Commission, the California Public Utilities Commission, Sierra Pacific Power Company and CP National.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 28, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-25364 Filed 10-23-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-1-9-000, 001]

Rate Filing Pursuant to Tariff Rate Adjustment Provisions; Tennessee Gas Pipeline Co.

October 17, 1985.

Take notice that on October 15, 1985, Tennessee Gas Pipeline Company a Division of Tenneco Inc. (Tennessee) tendered for filing in Original Volume No. 1 of its FERC Gas Tariff, Sixteenth Revised Sheet No. 21 to be effective on the date of the Commission's order accepted this revised tariff sheet.

The revised tariff sheet provides for a Current Rate Adjustment of a negative 83.15 cents per dth which is based on a weighted average cost of gas of \$2.38 per dth and a \$0 surcharge for amortizing unrecovered purchased gas costs. Tennessee requests that the Commission grant any waivers necessary to make this tariff sheet effective as proposed.

Tennessee states that it has served a copy of this filing to all of its customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 23, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-25365 Filed 10-23-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-177-000]

Informal Settlement Conference; Texas Eastern Transmission Corp.

October 21, 1985.

Take notice that on October 31, 1985, at 10:00 a.m., an informal settlement conference will be convened to discuss the possibilities of settlement in the above-captioned case. The conference will be held at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

All interested persons and Commission Staff are invited to attend; however, attendance at the conference will not confer party status. Any person wishing to become a party to these proceedings must file a motion to intervene in accordance with Rule 213(d) of the Commission's Rule of Practice and Procedure (18 CFR 385.214(d)).

For further information contact Joel L. Saltzman, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-5354. Kenneth F. Plumb,

Secretary.

[FR Doc. 85-25386 Filed 10-23-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER85-707-000 and ER85-689-000]

Electric Rates; Western Massachusetts Electric Co.; Order Accepting for Filing and Suspending Rates, Noting Interventions, Denying Motions, Consolidating Dockets, and Establishing Hearing and Price Squeeze Procedures

Issued October 17, 1985.

Before Commissioners: Raymond J. O'Connor, Chairman; A. G. Sousa and Charles G. Stalon.

On August 23, 1985, in Docket No. ER85-707-000, Western Massachusetts Electric Company (WMECO) tendered for filing a proposed increase in rates for partial requirements service to the City of Westfield, Massachusetts, and for full requirements service to five wholesale customers.¹ The proposed rates would result in an increase in revenues of approximately \$2.4 million (42.6%) for the calendar year 1986 test period. WMECO requests an effective date of October 23, 1985.

The 1986 test year reflects the inclusion of costs associated with a full year's operation of the Millstone Unit No. 3 nuclear generating station in Waterford, Connecticut.² Since WMECO expects Millstone Unit No. 3 to go into service sometime after the first quarter of 1986, the company requests that the rate increase be suspended for five months beyond the requested effective date or until commercial operation of

Millstone Unit No. 3 begins, whichever is later.

Notice of the company's filing was published in the *Federal Register*,³ with comments due on or before September 11, 1985. On September 11, 1985, Massachusetts Electric Company (MassElec) filed a motion to intervene in this proceeding which raised no substantive issues. A protest and motion to intervene was also filed on September 11, 1985, jointly by the City of Westfield, Massachusetts, and the Towns of Chester and Russell, Massachusetts (Municipals).

The Municipals request that the Commission require WMECO to refile its rates applicable to Westfield. The rates for that customer include both base/intermediate and peaking power rates. Pursuant to the terms of a settlement agreement approved in Docket No. E-8843, the rates are to be based on "reasonable allocations of the Company's costs of providing electric power having the different cost characteristics associated with peaking power and base/intermediate power." The Municipals contend that WMECO's rates to Westfield are not cost-based and, therefore, the filing as to that customer violates the *Mobile-Sierra*⁴ doctrine. In the alternative, the Municipals request summary disposition as to cash working capital, increases in decommissioning costs for Millstone Unit Nos. 1 and 2, and the inclusion for the first time of decommissioning costs associated with Millstone Unit No. 3.⁵ Additionally, the Municipals request: (1) That the company be required to phase-in the costs associated with Millstone Unit No. 3, if such a phase-in occurs at the retail level, so as to avoid a price squeeze;⁶ (2) that the Commission not impose an expedited hearing schedule; and (3) that allegedly excessive reserves be disallowed. Further, they request that the Commission initiate an investigation into the justness and reasonableness of the costs flowed through to WMECO through the Northeast Utilities

Generation and Transmission (NUG&T) Agreement pursuant to sections 206 and 306 of the Federal Power Act. Finally, the Municipals concur with the requested effective date for the proposed rates, subject to the condition that if the commercial operation date of Millstone Unit No. 3 is delayed beyond six months of May 1, 1986, WMECO be required to update its filing at the Commission.

On September 23, 1985, WMECO filed a timely response to the Municipals' pleading. While not opposing the intervenors' motion to intervene, the company requests denial of the additional motions and requests contained in the pleading.

Discussion

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 285.214), the timely motions to intervene serve to make MassElec, the City of Westfield Gas and Electric Department, and the Towns of Chester and Russell parties to this proceeding.

We shall deny the Municipals' motions to reject the Company's filing or to require it to refile its rates. The language upon which they rely in support of their request is exceedingly broad in nature. What constitutes a "reasonable allocation" of costs raises issues which are more properly determined on the basis of an evidentiary hearing.

With respect to the Municipals' motions for summary disposition, we shall deny them. The Municipals rely upon the Commission's proposed rulemaking relating to cash working capital⁷ in support of their motion on this issue. The method contained in that rule is, at this time, simply a proposal. This is not a proper basis for summary disposition. With respect to the Millstone decommissioning costs, the fact that the Commission has not yet examined and approved these costs is not grounds for summary exclusion of the expenses from the Company's cost of service. If the Municipals believe that such costs are excessive or should be eliminated, they may pursue these matters at hearing. As to the matter of excess reserves, it appears that the Municipals seek summary disposition as to this issue as well. We find that this matter raises issues of law or fact more appropriately resolved following an evidentiary hearing.

¹ 50 FR 37032 (1985).

² *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332; *FPC v. Sierra Pacific Power Co.*, 350 U.S. 346 (1956).

³ In addition, the Municipals raise the following issues: (1) Excessive purchased power costs; (2) return on common equity; and (3) improper rate design.

⁴ In support, they cite other Commission dockets in which filing utilities have voluntarily implemented such a procedure. The Municipals specifically cite *Indiana & Michigan Electric Co.*, Docket Nos. ER85-587-000, *et al.* In addition, they indicate that Kansas City Power & Light Company will follow a similar procedure with respect to Docket Nos. ER83-548-000 and ER83-665-000. The Municipals state, however, that they do not know whether any Northeast Utilities company will propose a phase-in at the retail level.

⁷ Notice of Proposed Rulemaking, Calculation of Cash Working Capital Allowance for Electric Utilities, Docket No. RM84-9-000, 49 FR 14384 (1984).

¹ The five affected customers are: Chester Municipal Electric Light Department, Russell Municipal Light Department, Fletcher Electric Light Company, Massachusetts Electric Company, and New York State Electric & Gas Corporation. See Attachment for rate schedule designations.

² The company owns a 12.24 percent undivided joint interest in Millstone Unit No. 3.

Our review of the Company's filing indicates that the rates have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept the rates for filing and suspend them as ordered below.

In *West Texas Utilities Company*, 18 FERC ¶ 61,189 (1982), we explained that where our preliminary examination indicates that proposed rates may be unjust and unreasonable, and may be substantially excessive, as defined in *West Texas*, we would generally impose a maximum suspension. Here, our examination suggests that the proposed rates may yield substantially excessive revenues. Further, WMECO requests a five month suspension of the proposed rates, and the customers concur in this request. Therefore, we shall accept WMECO's proposed rates for filing and suspend them, as suggested, to become effective on the later of March 23, 1986, or the first day of commercial operation of the Millstone Unit No. 3, subject to refund.

With respect to the request that the Company be required to update its filing if the commercial operation date of Millstone Unit No. 3 is delayed beyond six months after November 1, 1986, the Municipals have provided no basis for requiring refiling. We shall therefore deny the request.

As to the request that WMECO be required to file an alternative phased-in rate increase, we have been cited to no case precedent or regulation precluding the utility from seeking its full rate increase, subject to refund. The two instances of phased-in rate increases presented by the intervenors were voluntary phase-ins sought by the filing utilities pursuant to settlement agreements. Further, the Municipals' request is a speculative one, suggesting the possibility of price squeeze concerns and seeking a wholesale phase-in only if and when WMECO files for retail rate relief and is ordered, for retail purposes, to implement a phase-in plan. Under these circumstances, we shall deny the request to direct WMECO to file alternative rates. We do so, however, without prejudice to the Municipals' ability to pursue claims of undue discrimination should they later materialize.

One of the issues raised by the intervenors involves the allowance for decommissioning costs of Millstone Unit Nos. 1, 2, and 3. Such costs have also been included by Holyoke Water Power Company and Holyoke Power and Electric Company in rates filed in Docket No. ER85-689-000. We find that

common questions of law and fact may be presented in this docket and Docket No. ER85-689-000.⁸ As a result, we shall phase the decommissioning cost issue in both dockets and shall consolidate the phased proceedings as ordered below.

With respect to the Municipals' request that expedited hearing procedures not be established in this proceeding, we believe that this decision is best left to the discretion of the Chief Administrative Law Judge.

In accordance with the Commission's policy and practice established in *Arkansas Power and Light Company*, 8 FERC ¶ 61,131 (1979), we shall phase the price squeeze issue raised by the Municipals.

The Municipals further request that we institute an investigation pursuant to sections 206 and 306 of the Federal Power Act into the justness and reasonableness of the rates charged to the WMECO as a result of the NUG&T Agreement. The NUG&T Agreement provides for sharing of costs among the operating utilities of Northeast Utilities Inc., a public utility holding company of which WMECO is a wholly-owned subsidiary. We do not find that such an investigation has been shown to be warranted at this time. While the intervenors allege that the NUG&T Agreement passes on unjust and unreasonable costs, they have not supported their allegations in any detail. Further we do not believe that the matter is properly pursued in the present docket, which concerns WMECO's rates to its wholesale customers. An investigation of the NUG&T Agreement is a complex undertaking which should be pursued, if at all, in a separate proceeding. We shall therefore deny the intervenors' request for an investigation; our denial, however, is without prejudice to their filing a complaint pursuant to section 306 of the Federal Power Act.

The Commission orders: (A) The motions for rejection and summary disposition are hereby denied.

(B) The Municipals' request for a formal investigation of the NUG&T Agreement is hereby denied without prejudice, as discussed in the body of this order.

(C) WMECO's proposed rates are hereby accepted for filing, and are suspended, to become effective, subject to refund, on the later of March 23, 1986, or the commercial operation date of

Millstone Unit No. 3; the Municipals' request with respect to updating the filing is denied, as discussed in the body of this order.

(D) WMECO shall notify the Commission within 10 days of the date of commercial operation of Millstone Unit No. 3.

(E) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR Chapter I), a public hearing shall be held concerning the justness and reasonableness of WMECO's rates.

(F) The Commission staff shall serve top sheets in this proceeding within 10 days of the date of this order.

(G) Subdocket -000 in Docket No. ER85-707 is hereby terminated. The evidentiary proceedings ordered herein shall be assigned Docket No. ER85-707-001.

(H) The issues concerning nuclear decommissioning costs for Millstone Unit Nos. 1, 2, and 3 are hereby phased, as discussed in the body of this order.

(I) Docket No. ER85-707-001 is, with respect to the issue of Millstone decommissioning costs, consolidated with Docket No. ER-85-689-001 for purposes of hearing and decision.

(J) The Chief Administrative Law Judge shall designate one or more administrative law judges to preside over the separate and consolidated aspects of these dockets. The presiding judge(s) is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(K) The Commission hereby orders initiation of price squeeze procedures and further orders that this proceeding be phased so that the price squeeze procedures begin after issuance of a Commission opinion establishing the rate which, but for consideration of price squeeze, would be just and reasonable. The presiding judge may modify this schedule for good cause. The price squeeze portion of this case shall be governed by the procedures set forth in § 2.17 of the Commission's regulations as they may be modified prior to the initiation of the price squeeze phase of this proceeding.

⁸In addition, Millstone Unit No. 3 decommissioning costs have been included by Connecticut Light & Power Company in Docket No. ER85-720-000. The Commission has not yet acted upon that filing, however.

(L) The Secretary shall promptly publish this order in the Federal Register.

By the Commission.
Kenneth F. Plumb,
Secretary.

Rate Schedule Designations

Designation and Description

- (1) Supplement No. 7 to Rate Schedule FPC No. 115: Resale Service Rate CD-1
- (2) Eighth Revised Sheet No. 7, Fifth Revised Sheet No. 8, Second Revised Sheet No. 8A under FPC Electric Tariff, Original Volume No. 1 (Supersedes Seventh Revised Sheet No. 7, Fourth Revised Sheet No. 8, and First Revised Sheet No. 8A): Full Requirements Rate, Rate Schedule 2.

[FR Doc 85-25367 Filed 10-23-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-2629-002 et al.]

Applications for Certificates, Abandonments of Service and Petitions To Amend Certificates; Phillips Petroleum Co. et al.

October 17, 1985.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than normal for the filing of protests and petitions to intervene. Therefore, any person

¹ This notice does not provide for consolidation for hearing of the several matters covered herein.

desiring to be heard or to make any protests with reference to said application should on or before October 29, 1985, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,
Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft ³	Pressure base
G-2629-002, Sept. 30, 1985	Phillips Petroleum Company, 336 HS&L Bldg., Bartlesville, Okla. 74004.	Northern Natural Gas Company, Spraberry Plant, Permian Basin, Midland County, Texas.	(1)	
G-4281-000, D, Sept. 20, 1985	Sun Exploration & Production Co., P.O. Box 2880, Dallas, Texas 75221-2880.	Natural Gas Pipeline Company of America, Boonesville Bend Field, Wise County, Texas.	(2)	
G-4315-000, D, Oct. 4, 1985	Coltco Corporation, P.O. Box 300, Tulsa, Okla. 74102.	Panhandle Eastern Pipe Line Company, Keyes Field, Cimarron County, Oklahoma.	(3)	
G-6053-001, D, Sept. 23, 1985	Sun Exploration & Production Co.	United Gas Pipe Line Company, Gibson Field, Terrebonne Parish, Louisiana.	(4)	
G-7193-006, D, Sept. 23, 1985	Union Oil Company of California, P.O. Box 7600, Los Angeles, Calif. 90051.	Williston Basin Interstate Pipeline Company, Worland Field, Big Horn and Washakie Counties, Wyoming.	(5)	
G-14143-000, D, Sept. 23, 1985	Sun Exploration & Production Co.	Northern Natural Gas Company, Northeast Glenwood Field, Beaver County, Oklahoma.	(6)	
G-14143-001, D, Sept. 23, 1985	do	do	(7)	
G-14286-000, D, Sept. 23, 1985	do	Northern Natural Gas Company, Hugoton Field, Finney County, Kansas.	(8)	
G-18541-000, D, July 22, 1985	do	Natural Gas Pipeline Company of America, S.E. Boyd Field, Beaver County, Oklahoma.	(9)	
G-19409-001, D, Sept. 23, 1985	do	Panhandle Eastern Pipe Line Company, Hopewell S. Field, Pratt County, Kansas.	(10)	
C160-205-000, D, Sept. 23, 1985	do	Arkansas Louisiana Gas Company, S.E. Zion Field, Garfield County, Oklahoma.	(11)	
C61-1147-005, D, Sept. 23, 1985	do	ANR Pipeline Company, Woodward Area, Woodward, Woods, Major and Dewey Counties, Oklahoma.	(12)	
C182-591-000, D, Sept. 11, 1985	Hessie Hunt Exploration Company (Succ. to Hessie Hunt Trust), 2800 Thanksgiving Tower, Dallas, Texas 75201.	El Paso Natural Gas Company, North Puckett Effenberger Field, Pecos County, Texas.	(13)	
C184-885-001, D, Sept. 19, 1985	Sun Exploration & Production Co.	Northwest Central Pipeline Company, N.E. Wynoke Field, Woods, County, Oklahoma.	(14)	
C187-1644-003 and C181-355-003, D, Oct. 2, 1985	Phillips Petroleum Co. (Succ. to Phillips Oil Company), 336 HS&L Bldg., Bartlesville, Okla. 74004.	Transcontinental Gas Pipe Line Corporation, Ship Shoal Block 28, Offshore Louisiana.	(15)	
C188-200-003, D, Sept. 23, 1985	Sun Exploration & Production Co., P.O. Box 2880, Dallas, Texas 75221-2880.	Arkansas Louisiana Gas Company, Peno Field, Various Counties, Oklahoma.	(16)	
C188-816-007, D, Sept. 20, 1985	Phillips Petroleum Company	Northern Natural Gas Company, Panhandle Area, Gray County, Texas.	(17)	
C180-19-002, D, Oct. 2, 1985	Chevron U.S.A. Inc., P.O. Box 7309, San Francisco, Calif. 94120-7309.	Natural Gas Pipeline Company of America, OCS-G-2536, West Cameron Block 182, Offshore Louisiana.	(18)	
C182-282-003, E, Oct. 4, 1985	Odeco Oil & Gas Company (Succ. in interest to Sun Exploration & Production Company), P.O. Box 61780, New Orleans, La. 70161.	Tennessee Gas Pipeline Company, Ship Shoal Block 94 Field, Terrebonne Parish, Louisiana.	(19)	14.73
C182-282-004, E, Oct. 4, 1985	do	do	(20)	14.73
C182-282-005, E, Oct. 4, 1985	do	do	(21)	14.73
C185-478-000, (G-2683), B, Apr. 29, 1985	Terna Resources, Inc., P.O. Box 2329, Tulsa, Okla. 74101.	Tennessee Gas Pipeline Company, N. Louise (Trans-Tex) Field, Wharton County, Texas.	(22)	14.73
C185-680-000, A, Sept. 13, 1985	InterNorth Inc. dba HNG/InterNorth, 10000 Old Katy Road, Houston, Texas 77055.	Transcontinental Gas Pipe Line Corporation, Mustang Island Area, Block A-111, Offshore Texas.	(23)	
C185-682-000, (C177-731), B, Sept. 13, 1985	Odeco Oil & Gas Company	ANR Pipeline Company, Eugene Island Block 27, Offshore Louisiana.	(24)	
C185-683-000, (C182-852), B, Sept. 13, 1985	Sun Exploration & Production Co.	Natural Gas Pipeline Company of America, (Succ. to Lone Star Gas Company), Knox Field, Grady and Stephens Counties, Oklahoma.	(25)	
C185-684-000, (C185-1196), B, Sept. 16, 1985	do	ANR Pipeline Company, Dacoma, S.E. Field, Alfalfa County, Oklahoma.	(26)	

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft ³	Pressure base
C185-686-000, (C178-153), B, Sept. 16, 1985	Monsanto Oil Company, 1300 Post Oak Tower, 5051 Westheimer, Houston, Texas 77056	ANR Pipeline Company, Long Butte No. 1 well, Fremont County, Wyoming	(17)	
C185-687-000, (C178-788), B, Sept. 16, 1985	Monsanto Oil Company, 1300 Post Oak Tower, 5051 Westheimer, Houston, Texas 77056	Natural Gas Pipeline Company of America, Mayer No. 1 well, Eddy County, New Mexico	(17)	
C185-691-000, (C180-93), B, July 12, 1985	Geo. Oil & Gas Company of Houston P.O. Box 2511, Houston, Texas 77011	Southwest Gas Corporation, S. Canyon, Bar X and San Arroyo Fields, Garfield and Mesa Counties, Colorado and Grand County, Utah	(17)	
C185-697-000, B, Sept. 23, 1985	Oleum Incorporated, P.O. Box 631, Amarillo, Texas 79173	Southern Natural Gas Company, Dalcour Field, Plaquemine Parish, Louisiana	(17)	
C185-699-000, B, Sept. 25, 1985	Total Petroleum, Inc., One Allen Center—Suite 2850, Houston, Texas 77002	Northern Gas Marketing, Inc., Lease No. OCS-G-3105, Matagorda Island Area, Block 700, Offshore Texas	(17)	
C185-703-000, A, Sept. 30, 1985	Texaco, Inc., P.O. Box 52332, Houston, Texas 77052	Bridgeport Gas Distribution Co., South Marsh Island Block 229 Well #123 (OCS-0310), Offshore Louisiana	(17)	14.73
C185-704-000, (G-6224), B, Sept. 27, 1985	Union Texas Petroleum Corporation, P.O. Box 2120, Houston, Texas 77252-2120	Arkansas Louisiana Gas Company, Chickasha Field, Grady County, Oklahoma	(17)	
C185-705-000, (C181-1411), B, Sept. 27, 1985	do	Transcontinental Gas Pipe Line Corporation, Southeast Houma Field, Terrebonne Parish, Louisiana	(17)	
C185-706-000, B, Sept. 27, 1985	Equitable Petroleum Corporation	Transcontinental Gas Pipe Line Corporation, Benj. J. White Survey, A-345, Mission Valley, N. (2300) Field, Victoria County, Texas	(17)	
C185-707-000, (C167-1609), B, Sept. 30, 1985	Pioneer Exploration Company, P.O. Box 1307, Wichita, Kansas 67201	United Gas Pipe Line Company, Bayou St. Vincent Field, Assumption Parish, Louisiana	(17)	
C185-708-000, (C169-257), B, Sept. 30, 1985	Shell Western E&P Inc., P.O. Box 4684, Houston, Texas 77210	Phillips Petroleum Company, West Panhandle Field, Hutchinson County, Texas	(17)	
C185-709-000, B, Sept. 30, 1985	Conoco Inc., P.O. Box 2197, Houston, Texas 77252	Shell Oil Company and Exxon Company U.S.A. (Succ. in interest to The Carter Oil Company), Bayou Field, Carter County, Oklahoma	(17)	
C185-710-000, B, Sept. 30, 1985	do	do	(17)	
C185-711-000, B, Sept. 30, 1985	do	do	(17)	
C185-712-000, B, Sept. 30, 1985	Conoco Inc., P.O. Box 2197, Houston, Texas 77252	Shell Oil Company and Exxon Company U.S.A. (Succ. in interest to The Carter Oil Company), Bayou Field, Carter County, Oklahoma	(17)	
C185-713-000, B, Sept. 30, 1985	do	do	(17)	
C185-714-000, B, Sept. 30, 1985	do	do	(17)	
C185-715-000, B, Sept. 30, 1985	do	do	(17)	
C185-716-000, B, Sept. 30, 1985	do	do	(17)	
C185-718-000, (C165-803), B, Sept. 30, 1985	George R. Brown, 1450 One Allen Center, 500 Dallas Street, Houston, Texas 77002	Texas Gas Transmission Corporation, North Rousseau Field, LaFourche Parish, Louisiana	(17)	
C185-719-000, (G-4953), B, Sept. 30, 1985	Delta Petroleum, Inc., P.O. Box 1307, Wichita, Kansas 67201	United Gas Pipeline Company, Mustang Island Field, Nueces County, Texas	(17)	
C185-720-000, B Oct. 2, 1985	Combined Resources Corporation, 2431 E. 61st Street—Suite 400, Tulsa, Okla. 74136	Arkansas Louisiana Gas Company, Enid Area, Garfield County, Oklahoma	(17)	
C186-3-000, (C171-846), B, Oct. 2, 1985	Phillips Oil Company, 336 HS&L Bldg., Bartlesville, Okla. 74004	ANR Pipeline Company, Calcasieu Pass, Cameron Parish, Louisiana	(17)	
C186-6-000, B, Oct. 4, 1985	El Grande Pipeline Corporation, P.O. Box 152510, Irving, Texas 75015-2510	Northwest Central Pipeline Corporation, NW Crawford, Roger Mill County, Oklahoma	(17)	
C186-8-000, (G-10631), B, Oct. 3, 1985	Chevron U.S.A. Inc., P.O. Box 7309, San Francisco, Calif. 94120-7309	Northern Natural Gas Company, Monument Field, Lea County, New Mexico	(17)	
C186-9-000, (C177-292), B, Oct. 4, 1985	Shell Western E&P Inc., P.O. Box 4684, Houston, Texas 77210	El Paso Natural Gas Company, Bisti Field, San Juan County, New Mexico	(17)	

¹ Applicant is filing for addition of alternate delivery point and deletion of a previously requested alternate delivery point.

² Sale of Gage and Thelford properties to Mitchell Energy Corporation.

³ The Purdy "F" No. 1 well, Sec. 28-6N-8E-4M, Cimarron County, Oklahoma, watered-out and was plugged and abandoned in January 1978. The Purdy "F" No. 2 well was designated as a replacement well, however, this well, also, watered-out and was plugged and abandoned. This being the last well on the lease, the lease was reverted back to the original owner.

⁴ Sale of "O" SU E—Lutcher Moore #2 to Vernon Faulconer.

⁵ Union Oil Company of California (Union) and Williston Basin Interstate Pipeline Company (Williston) are parties to a Gas Purchase Contract dated 9-30-49 which was amended on 7-9-85 to delete certain acreage from which gas has not previously been delivered under said contract.

⁶ Sale of Adsh E. Schaffter Unit to Kenneth W. Cory.

⁷ Sale of Shepherd Unit to Van W. Giffert.

⁸ Sale of L.G. Strasser Unit to Kenworthy Operating Company.

⁹ Partial Assignment and Bill of Sale of Edward Wahl, Property No. 737640, to Vernon E. Faulconer.

¹⁰ Sale of Doggett Unit to Timberwolf Energy Co.

¹¹ Sale of State School Land "A" to Beck Pump and Supply, Inc.

¹² Sale of James Reese Unit to Kaiser-Francis Oil Company.

¹³ Uneconomical.

¹⁴ Sale of undivided 20% interest in M.S. Olson property to Felt Oil and Gas Company.

¹⁵ The wells connected to the Ship Shoal Block 29 "E" Platform have all ceased to produce and no further development is planned.

¹⁶ Partial Assignment and Bill of Sale of certain properties located in LeFlore County, Oklahoma to Ronny G. Altman.

¹⁷ Applicant and Northern Natural Gas Company have agreed to delete the InterNorth, Inc. McGee 1120 #1 from the Exchange Agreement dated 6-17-88.

¹⁸ Production has ceased and the lease has been surrendered.

¹⁹ Effective 11-1-83, Sun Exploration and Production Company assigned its interest in Ship Shoal Block 94 Field to Odeco Oil & Gas Company.

²⁰ Effective 9-1-82, Terra Resources, Inc. sold all its interest in the wells and leases covered under Rate Schedule No. 42 to Odeco.

²¹ Applicant is filing under Gas Purchase Agreement dated 5-20-85.

²² On 3-29-85, federal lease OCS-G-0312 (Eugene Island Block 27) was surrendered to the MMS because of the discontinuance of production operations. The last well on Block 27 ceased production on 10-8-84.

²³ Sale of only producing property 11-1-70. Termination of contract 9-1-84.

²⁴ Sale of only producing property to Combined Resources Corporation.

²⁵ The Long Butte No. 1 well (the only well under the Contract) was not committed to interstate commerce on 11-8-78, the well was determined to be Sec. 102(c)(1)(C) gas, and is no longer subject to FERC jurisdiction. The Contract has been replaced by Contract dated 10-1-84.

²⁶ The Mayer No. 1 Well (the only well under the Contract) was not committed to interstate commerce on 11-8-78, the well was determined to be Sec. 103 gas, and is no longer subject to FERC jurisdiction. The Contract has been replaced by Contract dated 11-1-84.

²⁷ Certain acreage has been sold to Quinoco Petroleum Inc. on 1-1-84.

²⁸ Production has ceased; wells were plugged and abandoned in July, 1980.

²⁹ Gas no longer wanted by purchaser.

³⁰ Applicant is filing under Contract dated 9-25-85.

³¹ Wells on dedicated acreage have been plugged and abandoned. Primary term of the Contract expired on 2-15-83. No sales were made since October 1980.

³² The last producing wells dedicated to R.S. 57, was plugged and abandoned on 8-31-78. All leases have expired.

³³ M.E. Cooley "A" No. 1 is depicted in the 2300-foot sand reservoir, based on electric log and sidewall core data and test data from other wells in the near vicinity, there is no other potential oil/gas zone in the well worthy of testing; thus, plans are being finalized to plug and abandon the well.

³⁴ All acreage has been assigned to Lyco Acquisition 1984 Limited Partnership.

³⁵ Normal depletion and contract passed its primary term.

³⁶ The last well ceased producing and was plugged and abandoned on 12-31-79. The twenty-year primary term of the gas purchase contract expired as of 4-1-85.

³⁷ All production has ceased and the Gas Purchase Contract has expired by its own terms effective 3-7-82.

³⁸ The wells supplying gas depleted to their economic limit and have been plugged.

³⁹ The Graham State "F" No. 5 well, was producing from a gas zone until March 1980. It was recompleted as an oil well in 1984.

⁴⁰ All acreage has been assigned to Hixon Development Company.

Filing Code: A—Initial Service, B—Abandonment, C—Amendment to add acreage, D—Amendment to delete acreage, E—Total Succession, F—Partial Succession.

[FR Doc. 85-25363 Filed 10-23-85; 8:45 am]

BILLING CODE 6717-01-M

**ENVIRONMENTAL PROTECTION
AGENCY**

[AD-FRL-2915-3]

**Extension of the Public Comment
Period on Notice of Intent To List
Chromium or Hexavalent Chromium as
a Hazardous Air Pollutant****AGENCY:** Environmental Protection
Agency.**ACTION:** Extension of the public
comment period.

SUMMARY: This notice announces an extension of the public comment period provided in EPA's Notice of Intent to list chromium or hexavalent chromium under the Clean Air Act published on June 10, 1985 (50 FR 24317). That notice described the results of EPA's preliminary assessment of chromium as a potentially toxic air pollutant and announced EPA's intent to add chromium or hexavalent chromium to the section 112(b)(1)(A) list based on the health and risk assessment. In response to the 60-day public comment period provided in the notice, which was scheduled to close on August 9, 1985, a request was submitted for an extension of the public comment period. For this reason the public comment period has been extended for an additional 83 days and will now close on Thursday, October 31, 1985.

Dated: October 20, 1985.

Charles L. Elkins,

*Acting Assistant Administrator for Air and
Radiation.*

[FR Doc 85-25334 Filed 10-23-85; 8:45 am]

BILLING CODE 6560-50-M

**FEDERAL COMMUNICATIONS
COMMISSION**

[Report No. 1545]

**Petitions for Reconsideration of
Actions in Rulemaking Proceedings**

October 18, 1985.

The following listings of petitions for reconsideration filed in Commission rulemaking proceedings is published

pursuant to § 1.429(e). Oppositions to such petitions for reconsideration must be filed within 15 days after publication in this Public Notice in the *Federal Register*. Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Overall revision of the rules regarding industrial, scientific, and medical (ISM) equipment under parts 0, 2, and 18. (Docket No. 20718).

Filed by: Henry L. Baumann & Julian L. Shepard, Attorneys for National Association of Broadcasters on 10-7-85.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85-25357 Filed 10-23-85; 8:45 am]

BILLING CODE 6712-01-M

**Third and Fourth Meetings of the Land
Mobile Radio/UHF Television
Technical Advisory Committee**

The third meeting of the Land Mobile Radio/UHF Television Technical Advisory Committee will be held on November 15, 1985, in Room 856 (the Commission Meeting Room), 1919 M Street, NW., Washington, DC. The meeting will start at 10:00 A.M.

The fourth meeting of the Committee will be held on December 18, 1985 at the same time and location.

All interested parties are invited to attend these meetings. Since this is a technical advisory committee, attendees should be prepared for technical discussions.

The agenda for these meetings will consist of:

1. Approval of minutes of last meeting;
2. Status report from working group co-convenors;
3. Discussion of new business for the Committee;
4. Discussion of appropriate date and tentative agenda for next meeting.

Any questions regarding these meetings should be directed to Mr. Kenneth Nichols at (301) 725-1585.

William J. Tricarico,

*Secretary, Federal Communications
Commission.*

[FR Doc. 85-25358 Filed 10-23-85; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 85-306 et al.]

**Saint Augustine's College et al.;
Hearing Designation Order**

In re applications of: MM Docket No. 85-306:

File No.

Saint Augustine's College, BP-84122OAC
New Hope, North Carolina; Req: 750 kHz, 0.5 kW, D.James E. Auel & Robert A. BP-850329AD
Jones, d/b/a, Virginia Broadcasters, Tuckahoe, Virginia; Req: 720 kHz, 10 kW(5 kW, DA-CH), DA-D.North Carolina Radio, BP-850329AG
Wake Forest, North Carolina; Req: 720 kHz, 1 kW, DA-D.

For Construction Permit.

Adopted: October 4, 1985.

Released: October 18, 1985.

By the Chief, Audio Services Division.

1. The Commission, by the Chief, Audio Services Division, acting pursuant to delegated authority, has under consideration the mutually exclusive applications of Saint Augustine's College (Saint Augustine); James E. Auel & Robert A. Jones d/b/a Virginia Broadcasters (Virginia Broadcasters); and North Carolina Radio (North Carolina) for construction permits for new AM radio stations.

2. *Environmental narrative statement issues.* Since the proposals of Virginia Broadcasters and North Carolina constitute major environmental actions as defined by § 1.1305 of the Commission's Rules, they are required to submit the environmental information described in § 1.1311. The environmental narrative statements submitted by these applicants were prepared by the same engineering consultant and are in all respects identical. A question arises under these circumstances as to whether the statements reflect individual conditions or are instead "boilerplate" submissions. In preparing their responses to the issue which we are specifying here, it is our expectation that the parties will address this concern as well as the specific deficiencies in the statement, namely failure to provide a description of the site and surrounding area and a discussion of considerations leading to selection of the site.

3. Accordingly, Virginia Broadcasters and North Carolina will be required to file within 30 days of the release of this Order their amended environmental narrative statements with the presiding

Administrative Law Judge. In addition, a copy shall be filed with the Chief, Audio Services Division, who will then proceed regarding this matter in accordance with the provisions of § 1.1313(b). Accordingly, § 1.1317 of the Rules is waived to the extent that the comparative phase of the case will be allowed to begin before the environmental phase is completed. See *Golden State Broadcasting Corp.*, 71 FCC 2d 229 (1979), *recon. denied sub nom. Old Pueblo Broadcasting Corp.*, 83 FCC 2d 337 (1980).

4. *Saint Augustine application.* Applicants for new broadcast stations are required by § 73.3580 of the Commission's Rules to give local notice of the filing of their applications. We have no indication that Saint Augustine published the required notice. To remedy this deficiency, the applicant must publish local notice of the application, if it has not already done so, and so inform the presiding Administrative Law Judge within 30 days of the release of this Order, or an appropriate issue will be specified by the Judge.

5. *Virginia Broadcasters application.* We are unable to determine from the contour map submitted whether the proposed 5 mV/m daytime and critical hours contours will encompass Tuckahoe, Virginia, the principal community to be served, as required by § 73.24(j) of the Commission's Rules. Accordingly, an appropriate issue will be specified.

6. Except as indicated by the issues specified below, all applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding. As the proposals are for different communities, we will specify an issue to determine pursuant to section 307(b) of the Communications Act of 1934, as amended, which proposal or combination of proposals would best provide a fair, efficient, and equitable distribution of radio service. We will also specify a contingent comparative issue, should such an evaluation of the proposals prove warranted.

7. Accordingly, it is ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. If a final environmental impact statement is issued with respect to the

application of James E. Auel and Robert A. Jones d/b/a Virginia Broadcasters and North Carolina Radio, which concludes that the proposed facilities are likely to have an adverse effect on the quality of the environment, to determine:

(a) Whether the proposals are consistent with the National Environmental Policy Act, as implemented by §§ 1.1301-1319 of the Commission's Rules; and

(b) Whether, in light of the evidence adduced pursuant to (a) above, the applicants are qualified to construct and operate as proposed.

2. To determine whether the 5 mV/m daytime and critical hours contours proposed by James E. Auel and Robert A. Jones d/b/a Virginia Broadcasters will encompass Tuckahoe, Virginia, the principal community to be served, as required by § 73.24(j) of the Commission's Rules and, if not, whether a waiver of this provision is warranted.

3. To determine: (a) The areas and populations which would receive primary aural service from the proposals and the availability of other primary service to such areas and populations, and (b) in light thereof and pursuant to section 307(b) of the Communications Act of 1934, as amended, which proposal or combination of proposals would best provide a fair, efficient, and equitable distribution of radio service.

4. To determine, in the event it is concluded that a choice among the applicants should not be based solely on considerations relating to section 307(b), which of the proposals would, on a comparative basis, best serve the public interest.

5. To determine in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

8. It is further ordered, that § 1.1317 of the Commission's Rules is waived to the extent indicated herein. Within 30 days of the release of this Order, James E. Auel and Robert A. Jones d/b/a Virginia Broadcasters and North Carolina Radio shall submit the amended environmental narrative statements required by § 1.1311 of the Rules, to the presiding Administrative Law Judge, with a copy to the Chief, Audio Services Division.

9. It is further ordered, that Saint Augustine College comply with the local notice requirements of § 73.3580 of the Commission's Rules, if it has not already done so, and submit the required certification to the presiding Administrative Law Judge within 30 days of the release of this Order.

10. It is further ordered, that in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed

in this proceeding shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M Street, NW., Washington, DC.

11. It is further ordered, that to avail themselves of an opportunity to be heard, the applicants shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 30 days of the mailing of this Order, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

12. It is further ordered, that the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice to the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission

W. Jan Gay,

Assistant Chief, Audio Services Division,
Mass Media Bureau.

[FR Doc. 85-25356 Filed 10-23-85; 8:45 am]

BILLING CODE 6712-01-M

Authority To Interconnect Communications Equipment or Security Devices to the Telephone Company

AGENCY: Federal Communications Commission.

ACTION: Notice of adoption by Common Carrier Bureau of order granting the Federal Emergency Management Agency (FEMA) permanent authority to act pursuant to § 68.2(e)'s national security exemption for equipment interconnection.

SUMMARY: Section 68.2(e) of the Commission's rules permits governmental departments, agencies or administrations to apply for exemption from the technical and legal requirements of Part 68 of the Commission's rules, in the interest of national defense and security. Part 68 governs the interconnection of customer provided telephone equipment with the nationwide telephone network. FEMA requested a permanent exemption under § 68.2(e), as well as special temporary authority to act under that section pending action on its request for permanent exemption. Temporary authority was granted on July 31, 1985. In this order, the FEMA's request for permanent authority to act pursuant to § 68.2(e) is granted.

DATES: This action was effective on the date of its adoption.

FOR FURTHER INFORMATION CONTACT: Anne M. Siegel, Esq., Domestic Services Branch, Common Carrier Bureau, (202) 634-1831.

SUPPLEMENTARY INFORMATION:

Order

In the Matter of the Application of The Federal Executive Agencies of the United States Government. For authority to interconnect communications equipment or security devices to the telephone company provided communications network pursuant to § 68.2(e) of the Commission's Rules.

Adopted: October 11, 1985.

Released October 18, 1985.

By the Chief, Common Carrier Bureau:

1. The Secretary of Defense, in his capacity as Executive Agent for the National Communications System (NCS),¹ has filed an application for permanent authority to permit the Federal Emergency Management Agency (FEMA) to act pursuant to the national security exemption of § 68.2(e) of the Commission's Rules. 47 CFR 68.2(e). That request is hereby granted.

2. Section 68.2(e) permits governmental departments, agencies or administrations to connect communications equipment or security devices to the public switched network without compliance with the provisions of Part 68 where such compliance could result in the disclosure of communications equipment or security devices, locations, uses, personnel, or activities which would adversely affect the national defense and security. To qualify for such treatment, the government entity must make proper written certification, as prescribed by § 68.2(e), to the appropriate common carrier, and the governmental entity must have been approved in writing by this Commission to act pursuant to § 68.2(e). To date, the Commission has granted 11 governmental departments

and agencies permanent authority to act pursuant to the provisions of 68.2(e).²

3. The application now before us states that the installation of FEMA communications equipment or security devices covered by § 68.2(e) has previously been performed by General Services Administration personnel, but problems in obtaining and installing telephone equipment in secure areas and a greater use of communications security equipment in general have made it necessary, for national defense and security reasons, for FEMA personnel to perform these installations themselves. Accordingly, DOD filed an application with the Commission on behalf of FEMA seeking permanent authority for FEMA to interconnect communications equipment or security devices to the public switched network pursuant to the provisions of § 68.2(e). DOD's application also requested that FEMA be granted special temporary authority to act under this section pending action on the request for permanent authority.

4. The request for special temporary authority was granted by Commission order released July 31, 1983, which appeared in the *Federal Register* on August 9, 1985, along with notice of the request for permanent authority. 50 FR 32311 (1985).³ Thirty days were allowed for comments and an additional ten days for reply comments on the permanent authority request filed by DOD on behalf of FEMA. No comments or oppositions have been received in response to this public notice. Having reviewed the DOD request now before us we find it consistent with the Commission's rules, as well as its overall policies to promote the national security and defense and determine that this application should be granted.

5. Accordingly, pursuant to the authority delegated under 0.291 and 0.303 of the Commission's Rules and Regulations, it is hereby ordered, That FEMA is granted permanent authority to act pursuant to the provisions of the Part 68 national security exemption as

¹ Executive Order No. 12472, "Assignment of National Security and Emergency Preparedness Telecommunications Functions", April 3, 1984 established the NCS. Section 1 (e) of E.O. 12472 designates the Secretary of Defense as Executive Agent for the NCS. By direction of the Executive Office of the President, the NCS Member organizations are: Dept. of Agriculture, Central Intelligence Agency, Department of Commerce, Dept. of Defense, Dept. of Energy, Federal Emergency Management Agency, General Services Administration, Dept. of the Interior, Dept. of Justice, National Aeronautics & Space Administration, National Security Agency, National Telecommunications & Information Administration, Organization of the Joint Chiefs of Staff, Dept. of State, Dept. of Transportation, Dept. of Treasury, U.S. Information Agency, Veterans Administration, and the Nuclear Regulatory Commission.

² These include the Department of State, Department of Defense (DOD), Department of Energy, General Services Administration, Department of Treasury, Central Intelligence Agency, Federal Bureau of Investigation, Department of Justice, Department of Commerce, Department of Transportation and the Federal Reserve Board. See Orders in CC Docket 78-331, 47 FR 12858 (1982) and 47 FR 30234 (1982).

³ According to § 68.2(e), the Commission may grant, without notice, special temporary authority to act pursuant to the provisions of that section for a period not to exceed 90 days. Permanent authority under § 68.2(e) requires publication of the request in the *Federal Register* and a thirty day period for public comment.

provided for in § 68.2(e), effective immediately.

6. It is further ordered, That notice of this action shall be published in the **Federal Register**.

Federal Communications Commission.

Albert Halprin,

Chief, Common Carrier Bureau.

[FR Doc. 85-25354 Filed 10-23-85; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Dellar-Davis Broadcasting Co. et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City and state	File No.	MM Docket No.
A. Lincoln Dellar et al., d/b/a Dellar-Davis Broadcasting Co., a General Partnership, Guadalupe, CA	BPH-840420B	85-298
B. Randall and Kathleen Kelton, Guadalupe, CA	BPH-840601A	
C. Kay Dee Communications, Inc., Guadalupe, CA	BPH-840628C	
D. Armando Garcia, Guadalupe, CA	BPH-840629A	
E. William E. Garrison et al., d/b/a SW/USA Broadcasting Co., Guadalupe, CA	BPH-840629H	
F. Andrew Reimer d/b/a Reimer Broadcasting, Guadalupe, CA	BPH-840629H	
G. Karen L. Manuel, Guadalupe, CA	BPH-840629P	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Air Hazard, B, C, D
2. Comparative, A, B, C, D, E, F, G
3. Ultimate, A, B, C, D, E, F, G

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the

complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street NW., Washington, DC 20554. Telephone (202) 632-6334.

W. Jan Gay,

Assistant Chief, Audio Services Division,
Mass Media Bureau.

[FR Doc. 85-25350 Filed 10-23-85; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Stephen G. Kafka et. al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City and State	File No.	MM Docket No.
A. Stephen G. Kafka; Kearney, NE	BPH-831202AL	85-307
B. Michael & Mary Ellen Ferrel d/b/a Ferrel Broadcasting, Kearney, NE	BPH-840518IE	
C. Kearney State College; Kearney, NE	BPH-840518II	
D. Polly A. Hays; Kearney, NE	BPH-840518IO	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Air Hazard, B
2. Comparative, A, B, C, D
3. Ultimate, A, B, C, D

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919

M Street NW., Washington, DC 20554.
Telephone (202) 632-6334.

W. Jan Gay,

Assistant Chief, Audio Services Division,
Mass Media Bureau.

[FR Doc. 85-25349 Filed 10-23-85; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Occupational Asthma—Etiologic Agent(s) and Disease Mechanism(s); Open Meeting

The following meeting will be convened by the National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control (CDC) and will be open to the public for observation and participation, limited only by the space available:

Date: November 5, 1985.

Time: 2 p.m.—4 p.m.

Place: Room 203, Appalachian Laboratory for Occupational Safety and Health, 944 Chestnut Ridge Road Morgantown, West Virginia 26505-2888.

Purpose: To review the project entitled "Occupational Asthma—Etiologic Agent(s) and Disease Mechanism(s)." Viewpoints and suggestions from industry, organized labor, academia, other government agencies, and the public are invited.

Additional information and copies of the research protocol may be obtained from: Jeffrey S. Fedan, Ph.D., Division of Respiratory Disease Studies, NIOSH, CDC, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505-2888. Telephones: FTS: 923-4561, Commercial: 304/291-4561.

Dated: October 16, 1985.

Elvin Hilyer,

Associate Director for Policy Coordination,
Centers for Disease Control.

[FR Doc. 85-25359 Filed 10-23-85; 8:45 am]

BILLING CODE 4160-19-M

Food and Drug Administration

[Docket No. 84N-0378]

Trans-Fatty Acids; Announcement of the Availability of the Federation of American Societies for Experimental Biology's Final Report

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the final report of the ad hoc Review Panel on *trans*-fatty acids is

available to the public. The ad hoc Review Panel was formed by the Federation of American Societies for Experimental Biology (FASEB), Life Sciences Research Office.

DATE: The final report was publicly available on September 18, 1985.

ADDRESSES: Requests for a copy of the final report should be sent to FASEB's Special Publications Office, FASEB, 9650 Rockville Pike, Bethesda, MD 20814, along with \$12 to cover the cost. A limited number of copies are available. In the near future the report will be available from the National Technical Information Service, 5275 Port Royal Rd., Springfield, VA 22161. Copies are on display at the Life Sciences Research Office, FASEB (address above) and at the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane Rockville, MD 20857.

SUPPLEMENTARY INFORMATION: In the Federal Register of December 13, 1984 (49 FR 48615), FDA announced that FASEB, under its contract with FDA (No. 223-83-2020), had formed an ad hoc Review Panel to examine available information on *trans*-fatty acids including (1) the levels in the current U.S. food supply, the levels of the past 10 to 20 years, and the levels predicted over the next 5 to 10 years; (2) estimates of U.S. dietary intake; (3) the toxicological, physiological, and nutritional effects; and (4) available methods for measuring *trans*-fatty acids and positional isomers in fats, oils, and foods.

In that same announcement (49 FR 48615), FDA announced that the ad hoc Review Panel would hold an open meeting at which opportunity would be provided for the public to present written and oral views, information, and data on *trans*-fatty acids. The meeting was held on February 21, 1985, 1:30 p.m., at the Milton O. Lee Bldg., FASEB, 9650 Rockville Pike, Bethesda, MD 20814.

The Panel met subsequently in executive session on February 21 through 22, 1985, to consider all the information and views received at the open meeting, written submissions, and all other published data and information obtained by the Panel in the course of its study.

In its final report, the ad hoc Review Panel presents its evaluation of the available information and data that relate to the health aspects of dietary *trans*-fatty acids.

Dated: October 17, 1985.

Mervin H. Shumate,

Acting Associate Commissioner for
Regulatory Affairs.

[FR Doc. 85-25313 Filed 10-23-85; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 85N-0474]

Federation of American Societies for Experimental Biology; Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a forthcoming open meeting of the Federation of American Societies for Experimental Biology's (FASEB) Scientific Steering Group on the Use of Scientific Expertise in Food and Cosmetic Safety Analyses (Scientific Steering Group). The Scientific Steering Group will meet in general session to evaluate study procedures used on Task Order Number 2, the Health Aspects of Dietary *Trans* Fatty Acids. It will also meet in executive session to review progress on Task Orders initiated since June 1, 1984, in conjunction with a contract that FDA has with FASEB concerning the use of outside scientific expertise in food and cosmetic safety analyses.

DATES: The open meeting will be held at 9 a.m., November 11, 1985. The executive session will be held immediately following the conclusion of the open meeting.

Requests to make oral presentations at the open meeting must be submitted in writing, be postmarked before October 28, 1985, and be received by November 4, 1985. Written presentations may be submitted until November 4, 1985.

ADDRESSES: Written requests to make oral presentations should be submitted as follows: Two copies to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and two copies to Kenneth D. Fisher, Life Sciences Research Office of the Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20814. Written presentations should be submitted in the same manner to both addresses above. Both the open and the executive session meeting will be held in the Lee Building Conference Room, Federation of American Societies for Experimental

Biology, 9650 Rockville Pike, Bethesda, MD 20814.

FOR FURTHER INFORMATION CONTACT: Kenneth D. Fisher, Life Sciences Research Office, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20814, 301-530-7030.

SUPPLEMENTARY INFORMATION: FDA has a contract with FASEB concerning the use of outside scientific expertise in food and cosmetic safety analyses. The objectives of this contract are (1) to provide expert, objective counsel to FDA on general and specific issues of scientific fact and (2) to explore various review mechanisms with respect to their effectiveness and efficiency. FASEB established the Scientific Steering Group to serve FASEB in conjunction with this contract.

In accordance with 21 CFR 14.15(b)(1), notice is given that the Scientific Steering Group will hold an open meeting on November 11, 1985, to evaluate procedures used in the completion of Task Order Number 2 under the contract, the Health Aspects of Dietary *Trans* Fatty Acids. The Scientific Steering Group will hold a closed executive session following the open meeting on November 11, 1985, to review progress on Task Orders initiated since June 1, 1984, under the contract.

Dated: October 21, 1985.

Adam J. Trujillo,
Acting Associate Commissioner for
Regulatory Affairs.

[FR Doc. 85-25336 Filed 10-21-85; 3:02 pm]

BILLING CODE 4160-01-M

Advisory Committee, Notice of Meeting

Correction

In FR Doc. 85-23701, beginning on page 40605 in the issue of Friday, October 4, 1985, make the following corrections:

- On page 40605, third column:
1. In the twelfth line, "below" should read "above".
2. In the seventh line from the bottom of the page, "appropriate" should read "approximate".

BILLING CODE 1505-01-M

Public Health Service

National Committee on Vital and Health Statistics; Meeting

Pursuant to the Federal Advisory Act (Pub. L. 92-463), notice is hereby given that the National Committee on Vital

and Health Statistics (NCVHS) established pursuant to 42 U.S.C. 242K, section 306(k)(2) of the Public Health Service Act, as amended, will convene on Thursday, November 7, and Friday, November 8, 1985 from 9:00 a.m. to 5:00 p.m. both days in Room 800 of the Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, D.C. 20201.

The Committee will hear reports from the Subcommittee on Uniform Minimum Health Data Sets, the Subcommittee on Disease Classification and Automated Coding of Medical Diagnoses, the Subcommittee on Statistical Aspects of Physician Payment Systems, and the Work Group on Minority Health Data Needs. The Subcommittees and Work Group will report on past activities and future plans. The Ad Hoc Subcommittee on Policy and Direction will report findings and recommendations for future direction of the NCVHS.

Further information regarding the Committee may be obtained by contacting Gail F. Fisher, Ph.D., Executive Secretary, National Committee on Vital and Health Statistics, Room 2-28 Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782, telephone (301) 436-7050.

Dated: October 16, 1985.

Manning Feinleib, M.D., Dr. P.H.,
Director, National Center for Health
Statistics.

[FR Doc. 85-25374 Filed 10-23-85; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Permit Issued for the Months of July, August, September 1985

Notice is hereby given that the U.S. Fish and Wildlife Service has taken the following action with regard to permit applications duly received according to section 10 of the Endangered Species Act of 1973, as amended, 16 U.S.C. 1539. Each permit listed as issued was granted only after it was determined that it was applied for in good faith, that by granting the permit it will not be to the disadvantage of the endangered species; and that it will be consistent with the purposes and policy set forth in the Endangered Species Act of 1973, as amended.

Additional information on these permit actions may be requested by contacting the Federal Wildlife Permit Office, 1000 North Glebe Road, Room 611, Arlington, Virginia 22201, telephone

(703/235-1903) between the hours of 7:45 a.m. to 4:15 p.m. weekdays.

July 1985

New York Zoological Society: X694483—Jul 01
Burnet Park Zoo: X694079—Jul 01
Robert D. Irvine: X696775—Jul 11
Horst W. Schmudde: X690784—Jul 12
Francisco Jose Vilella/LA Coop. Wildlife Research Unit: X692143—Jul 12
Wisconsin Regional Primate Research Center: X693665—Jul 12
Arizona-Sonora Desert Museum: X691828—Jul 13
George B. Johnson: X690033—Jul 15
Thomas C. Emmel/University of FL: X695444—Jul 16
William E. Blessing: X693557—Jul 30
Everett B. Pannkuk Jr.: X695601—Jul 30

August 1985

Atlanta Zoological Park: X695185—Aug 02
Dept. of Defense/Army: X693141—Aug 02
International Succulent Institute: X691945—Aug 02
Little Rock Zoological Gardens: X695564—Aug 08
Woodland Park Zoological Gardens: X695573—Aug 13
Phoenix Zoo: X693439—Aug 14
Lincoln Park Zoological Gardens: X695073—Aug 14
Margaret R. Clark: X695144—Aug 15
William E. Hodson: X692389—Aug 19
Woodland Park Zoological Gardens: X690699—Aug 26
James Fraser/VA Polytechnic Institute: X674488—Aug 30
John Nicolella: X693295—Aug 30

September 1985

Norman L. Epley: X696020—Sep 05
Peter Brazaitis: X696585—Sep 09
Dennis D. Bromley: X695450—Sep 09
Russell A. Reed: X695309—Sep 11
San Diego Zoological Society: X696801—Sep 19
Albert A. Cheramie: X696916—Sep 25
Florida Game & Fresh Water Fish Commission: X695231—Sep 25
James T. Parsons: X697111—Sep 26
U.S. Fish & Wildlife Service: X696233—Sep 27
Joseph C. Witt: X695299—Sep 30
Date: October 21, 1985.

R.K. Robinson,

Chief, Branch of Permits Federal Wildlife Permit Office.

[FR Doc. 85-25394 Filed 10-23-85; 8:45 am]

BILLING CODE 4310-55-M

Receipt of Application for Permit

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, et seq.):

PRT-695784

Applicant: International Animal Exchange,
Ferndale, MI.

The applicant requests a permit to purchase in interstate commerce a white-cheeked and a red-cheeked gibbon [*Hylobates (Nomascus) concolor*], and export them to Seoul Grand Park Zoo, Korea, for the purpose of enhancement of propagation.

PRT-700088

Applicant: Hagan Thompson, Las Vegas, NV.

The applicant requests a permit to import the personal sport-hunted trophy of a bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd of Mr. M.G. Wienand in Cape Province, South Africa, for the purpose of enhancement of propagation.

PRT-699971

Applicant: Ralph E. Ward, Bullhead City, AR.

The applicant requests a permit to import the personal sport-hunted trophy of a bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd of Mr. M.G. Wienand in Cape Province, South Africa, for the purpose of enhancement of propagation.

PRT-700206

Elmer E. Huff, Puleski, VA.

The applicant requests a permit to purchase in interstate commerce, one pair of captive-born Hawaiian (=nene) geese [*Nesochen (=Branta) sandvicensis*] from Mr. Paul Jones of Thomasville, North Carolina, for the purpose of enhancement of propagation.

PRT-699419

Applicant: Ben Sanders, U.S. Forest Service,
Gainesville, GA.

The applicant requests a permit to collect non-living, above-ground portions of four individual plants of small whorled pogonia [*Isotria medeoloides*] from Chattahoochee National Forest, for use as herbarium specimens. No live material is to be distributed or collected.

PRT-698700

Applicant: San Diego Zoological Society, San Diego, CA.

The applicant requests a permit to import a pair of captive-born clouded leopards (*Neofelis nebulosa*) from the Chengtu Zoological Garden in Chengtu, Szechuan, People's Republic of China, for the purpose of enhancement of propagation.

PRT-699523

Applicant: Jacksonville Zoological Park,
Jacksonville, FL.

The applicant requests a permit to import one female white-handed gibbon (*Hylobates lar*) from John H. Corr, U.S.

Embassy, Bogota, Columbia, for the purpose of enhancement of propagation or survival of the species.

PRT-699120

Applicant: International Animal Exchange,
Ferndale, MI.

The applicant requests a permit to purchase in interstate commerce 2 siamese crocodiles (*Crocodylus siamensis*) and export them to the Seoul Grand Park Zoo, Seoul, Korea, for enhancement of propagation and survival of the species.

PRT-700325

Applicant: Mesker Park Zoo, Evansville, IN.

The applicant requests a permit to purchase one male margay (*Felis wiedii*) from Greater Baton Rouge Zoo, Baker, LA, for enhancement of propagation and survival of the species.

PRT-700327

Applicant: Mesker Park Zoo, Evansville, IN.

The applicant requests a permit to purchase one female margay (*Felis wiedii*) from Henry Doorly Zoo, Omaha, NE, for enhancement of propagation and survival of the species.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 611, 1000 North Glebe Road, Arlington, Virginia 22201, or by writing to the Director, U.S. Fish and Wildlife Service of the above address.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Date: October 18, 1985.

Larry La Rochelle,

Acting Chief, Branch of Permits Federal
Wildlife Permit Office.

[FR Doc. 85-25393 Filed 10-23-85 8:45 am]

BILLING CODE 4310-55-M

Receipt of Permit Amendment Requests

The following applicants have applied for amendments to their permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT 2-9818

Applicant: County of San Mateo, CA and City of Daly City, CA.

The applicants request two amendments, "County Park" and "Rio

Verde Heights" to their permit PRT 2-9818 which authorizes the incidental take of mission blue butterflies (*Icaricia icarioides missionensis*), San Bruno elfin butterflies (*Callophrys mossii bayensis*) and San Francisco garter snakes (*Thamnophis sirtalis tetrataenia*) of San Bruno Mountain, California, pursuant to a multi-party agreement which implements the San Bruno Mountain Area Habitat Conservation Plan ("the HCP"). The permit was issued on March 4, 1983, under the authority of section 10(a)(1)(B) and 10(a)(2) of the Endangered Species Act of 1973, as amended. Substantial documents previously submitted in support of the "South Slope" amendment, issued August 30, 1985, are also applicable to County Park and Rio Verde Heights. An in-depth discussion of the permit and the South Slope amendment was published in the **Federal Register** of July 11, 1985, (50 FR 28289). The County Park Amendment would remove 19.2 acres from the HCP, 14 acres of which was disturbed by landfill operations prior to adoption of the HCP. The Rio Verde Heights amendment would change the number of grading phases from three (one phase per year for the next three years) to one phase to take place immediately. Separate supplements of the original EIR/EA for these amendment requests have been submitted.

Copies of these amendment requests are on file at the following locations and are available for inspection by the public during normal business hours: Federal Wildlife Permit Office, 1000 N. Glebe Road, Room 611, Arlington, VA 22201 (703/235-1093); U.S. Fish and Wildlife Service, Region 1, Office of Federal Assistance; Lloyd 500 Building, Suite 550, 500 N.E. Multnomah Street, Portland, Oregon 97232, (503/231-6134); U.S. Fish and Wildlife Service, Sacramento Office of Endangered Species, 2800 Cottage Way, Room #1823, Sacramento, California 95825, (916/484-4935); and County of San Mateo, Office of the Board of Supervisors, 401 Marshall, San Mateo, California 94003, (415/363-4127). Copies of the January 1985 Supplemental EIR/ES, the Addendum to the Supplement EIR/EA, and the Biological Study of the three amendments are also available for inspection at the above addresses. In addition, copies of the original HCP, EIR/EA and Agreement are available.

Interested persons may comment on these amendment requests by submitting written data, views or arguments to the Chief, Federal Wildlife Permit Office, 1000 N. Glebe Road, Room 611, Arlington, VA 22201 within 30

days of the date of this publication. Please refer to the Permit number when submitting comments.

Dated October 18, 1985.

Larry La Rochelle,

Acting Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 85-25392 Filed 10-23-85; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

Grand Junction Proposed Resource Management Plan and Final Environmental Impact Statement; Colorado

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Availability of the Proposed Resource Management Plan and Final Environmental Impact Statement.

SUMMARY: Pursuant to section 202 of the Federal Land Policy and Management Act of 1976 and section 102(2)(c) of the National Environmental Policy Act of 1969, the Bureau of Land Management has prepared a proposed resource management plan (RMP) and final environmental impact statement (EIS) for management of public land in the Grand Junction Resource Area.

The proposed RMP and final EIS is published in an abbreviated format and is designed to be used in conjunction with the draft RMP EIS released in March 1985.

ADDRESS: Copies of the proposed RMP final EIS are available upon request from the Grand Junction Resource Area office, Bureau of Land Management, 764 Horizon Drive, Grand Junction, Colorado 81506.

FOR FURTHER INFORMATION CONTACT: Forest Littrell, Area Manager, Bureau of Land Management, Grand Junction Resource Area, 764 Horizon Drive, Grand Junction, Colorado 81506. Telephone: 303-243-6552.

SUPPLEMENTARY INFORMATION: Copies of the proposed RMP and final EIS will be available for review at the following locations:

Bureau of Land Management

Washington Office, 1800 C Street, NW., Washington, DC 20240
Colorado State Office, 2020 Arapahoe Street, Denver, Colorado 80205
Grand Junction District Office, 764 Horizon Drive, Grand Junction, Colorado 81506
Glenwood Springs Resource Area Office, 50829 Highway 6 & 24, Glenwood Springs, Colorado 81601.

Libraries

Denver Public Library, Government Publications Department, 1357 Broadway, Denver, Colorado 80254.

Dated: October 18, 1985.

Bob Moore,

Associate State Director, Colorado State Office.

[FR Doc. 85-25347 Filed 10-23-85; 8:45 am]

BILLING CODE 4312-84-M

[CA 5055]

Exchange of Public and Private Lands in Placer County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of issuance of land exchange conveyance document, and order opening lands acquired in the exchange.

SUMMARY: The purpose of this exchange was to acquire the non-Federal land containing significant multiple-use values including timber, recreation, and wildlife habitat. The acquisition of this land consolidates public land ownership for more effective management. The public interest was well served through completion of this exchange. The land acquired in the exchange will be opened to the operation of the public land laws and to the full operation of the United States mining and mineral leasing laws. **EFFECTIVE DATE:** September 3, 1985. **FOR FURTHER INFORMATION CONTACT:** Viola Andrade, California State Office, (916) 978-4815.

The United States issued an exchange conveyance document to David G. Ruth, Lawrence W. Ruth, and Steven R. Ruth on September 3, 1985, for the following described public land under the Act of October 21, 1976 (90 Stat. 2750; 43 U.S.C. 1716):

Mount Diablo Meridian, California

T. 14 N., R. 10 E.,

Sec. 6, Lots 20, 31, 32, and 34;

Sec. 7, Lot 5.

Containing 120.85 acres.

In exchange for these lands, the United States acquired both the surface and mineral estates of the following described non-Federal land from the proponents:

Mount Diablo Meridian, California

T. 15 N., R. 10 E.,

Sec. 31, NE $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{4}$ SE $\frac{1}{4}$,

N $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, and SE $\frac{1}{4}$ SE $\frac{1}{4}$.

Containing 280.00 acres.

The public land and non-Federal land exchanged were of equal value.

At 10 a.m. on November 25, 1985, the non-Federal land described above shall

be open to operation of the public land laws generally, subject to valid existing rights and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on November 25, 1985, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

At 10 a.m. on November 25, 1985, the non-Federal land described above shall be open to applications under the United States mining laws and mineral leasing laws.

Inquiries concerning the land should be addressed to the Bureau of Land Management, Room E-2841, 2800 Cottage Way, Sacramento, California 95825.

Dated: October 16, 1985.

Sharon N. Janis,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 85-25323 Filed 10-23-85; 8:45 am]

BILLING CODE 4310-40-M

[M 64213]

Order and Notice Providing for Opening of Public Land in Dawson County, MT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Conveyance and Order Providing for Opening of Public Land in Dawson County, Montana.

SUMMARY: This order will open lands reconveyed to the United States in an exchange under the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701, et seq. (FLPMA) to the operation of the public land laws. It also serves to inform the public and interested state and local governmental officials of the transfer of the public lands.

DATE: At 9 a.m. on December 9, 1985, the lands reconveyed to the United States shall be open to the operation of the public land laws, subject to valid existing rights, the provisions of existing withdrawals and the requirements of applicable law. No minerals were transferred by either party in the exchange.

The lands described in paragraph 1 below were segregated from settlement, sale, location and entry, including mining, by the Notice of Realty Action published in the *Federal Register* on June 6, 1985 (50 FR 23883). The segregation of the lands transferred out of federal ownership terminated on issuance of the patents on August 26, 1985.

The lands described in paragraph 3 were segregated by the Notice of Realty Action, but were not used in the exchange.

FOR FURTHER INFORMATION CONTACT:

Edward H. Croteau, Chief, Lands Adjudication Section, BLM, Montana State Office, P.O. Box 36800, Billings, Montana 59107, Phone (406) 657-6082.

SUPPLEMENTARY INFORMATION: 1. Notice is hereby given that pursuant to section 206 of FLPMA (43 U.S.C. 1716), the following described surface estate was conveyed to the parties shown:

Principal Meridian, Montana

Thomas W. Stanton and Niles W. Stanton

T. 20 N., R. 34 E.,

Sec. 35, SW $\frac{1}{4}$ NW $\frac{1}{4}$.

T. 20 N., R. 35 E.,

Sec. 32, W $\frac{1}{2}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$.

160 acres.

George E. Damm, et al

T. 29 N., R. 54 E.,

Sec. 3, lots 1 and 3.

T. 30 N., R. 54 E.,

Sec. 34, lot 2.

57.99 acres.

T&S Stock Co., Inc.

T. 25 N., R. 47 E.,

Sec. 3, NW $\frac{1}{4}$ SW $\frac{1}{4}$.

40 acres.

Harmon Farms, Inc.

T. 27 N., R. 57 E.,

Sec. 21, SE $\frac{1}{4}$ SE $\frac{1}{4}$;

Sec. 22, S $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$;

Sec. 23, lot 8;

Sec. 26, lots 5 and 6.

T. 27 N., R. 58 E.,

Sec. 19, lots 1 and 2.

397.75 acres.

Ringling Ranch Limited Partnership

T. 4 N., R. 55 E.,

Sec. 26, NW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$,

SW $\frac{1}{4}$ SE $\frac{1}{4}$;

Sec. 28, W $\frac{1}{2}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$.

640 acres.

Total acreage transferred—1,295.74 acres.

2. In exchange for the above-selected land, the United States acquired the surface estate of the following-described land in Dawson County, Montana:

All of the land which makes up an island in the Yellowstone River more particularly described as follows:

Principal Meridian, Montana

T. 13 N., R. 53 E.,

Sec. 12, lots 5 and 6 and all accretions thereto.

T. 13 N., R. 54 E.,

Sec. 6, lot 9, and all accretions thereto; Sec. 7, lots 9 and 10, and all accretions thereto.

Aggregating 300 acres, more or less.

3. The following described public

lands were segregated from settlement, sale, location and entry by the Notice published on June 6, 1985, but were not used in the exchange:

Principal Meridian, Montana

T. 8 N., R. 42 E.,

Sec. 8, N $\frac{1}{2}$ NE $\frac{1}{4}$.

T. 4 N., R. 55 E.,

Sec. 14, S $\frac{1}{2}$.

T. 3 N., R. 55 E.,

Sec. 2, lot 4.

T. 3 N., R. 56 E.,

Sec. 6, SW $\frac{1}{4}$ NW $\frac{1}{4}$.

T. 3 N., R. 57 E.,

Sec. 2, E $\frac{1}{2}$ SE $\frac{1}{4}$.

Aggregating 572.72 acres, more or less.

4. The values of federal public land and the nonfederal land in the exchange were appraised at \$98,700 and \$97,500, respectively. A \$1,200 cash equalization payment was made to the United States.

5. At 9 a.m. on December 9, 1985, the lands described in paragraph 2 that were conveyed to the United States and those lands described in paragraph 3 that were segregated but not used in the exchange will be open to the operation of the public land laws.

October 17, 1985.

James Binando,

Acting Deputy State Director, Division of Lands and Renewable Resources.

[FR Doc. 85-25437 Filed 10-23-85; 8:45 am]

BILLING CODE 4310-DN-M

[AA-6678-A2]

Levelock Natives Ltd., Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1613(a), will be issued to Levelock Natives Limited for approximately 1,178 acres. The lands involved are:

Seward Meridian, Alaska

T. 11 S., R. 43 W. (Unsurveyed)

T. 12 S., R. 43 W. (Unsurveyed)

A notice of the decision will be published once a week for four (4) consecutive weeks, in the *Anchorage Daily News*. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513. ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision shall have until November 25,

1985 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E shall be deemed to have waived their rights.

Betty L. Sprott,

Acting Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 85-25360 Filed 10-23-85; 8:45 am]

BILLING CODE 4310-JA-M

[F-14921-A]

Tigara Corp; Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue a conveyance under the provisions of section 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1613(a), will be issued to Tigara Corporation for 344.84 acres. The lands involved are within U.S. Survey No. 3515 located in Point Hope, Alaska.

A notice of the decision will be published once a week for four (4) consecutive weeks, in the *Tundra Times*. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513. ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision shall have until November 25, 1985 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E shall be deemed to have waived their rights.

Helen Burleson,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 85-25361 Filed 10-23-85; 8:45 am]

BILLING CODE 4310-JA-M

[OR 37618]

Upper Willamette Management Framework Plan, Notice of Intent, Lane County, Oregon; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction Notice.

SUMMARY: The Federal Register notice of November 8, 1984 (FR Vol. 49, No. 218; FR Doc. 84-29404), on page 44683 provides a Notice of Intent to amend the Upper Willamette Management Framework Plan in response to a right-of-way application for the construction of a microwave communications relay site and access road. On July 8, 1985, the application was withdrawn. A plan amendment is consequently no longer needed. For this reason, the Notice of Intent to initiate a plan amendment is rescinded.

FOR FURTHER INFORMATION CONTACT: Jon Strandjord, Planning Coordinator, Eugene District Office, BLM, P.O. Box 10286, Eugene, Oregon 97440.

Dated: October 17, 1985.

Melvin D. Clausen,

District Manager.

[FR Doc. 85-25438 Filed 10-23-85; 8:45 am]

BILLING CODE 4310-33-M

[Group 895]

California; Filing of Plat of Survey

October 16, 1985.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, Kern County

T. 29 S., R. 33 E.

2. This plat, representing the dependent resurvey of a portion of the subdivisional lines, and the survey of the subdivision of section 14, Township 29 South, Range 33 East, Mount Diablo Meridian, under Group No. 895, California, was accepted September 23, 1985.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Bureau of Land Management and the Bureau of Indian Affairs.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage

Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records and Information Section.

[FR Doc. 85-25444 Filed 10-23-85; 8:45 am]

BILLING CODE 4310-40-M

[Group 844]

California; Filing of Plat of Survey

October 16, 1985.

1. These plats of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, Siskiyou County

T. 42 N., R. 8 W.

T. 41 N., R. 8 W.

2. These plats, representing the dependent resurvey of a portion of the east boundary and a portion of the subdivisional lines, and the survey of the subdivision of section 24, Township 42 North, Range 8 West, and the dependent resurvey of a portion of the north boundary and a portion of the subdivisional lines, and the survey of the subdivision of section 14, Township 41 North, Range 8 West, Mount Diablo Meridian, under Group No. 844, California, were accepted September 23, 1985.

3. These plats will immediately become the basic record of describing the land for all authorized purposes. These plats have been placed in the open files and are available to the public for information only.

4. These plats were executed to meet certain administrative needs of the Bureau of Land Management.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records and Information Section.

[FR Doc. 85-25445 Filed 10-23-85; 8:45 am]

BILLING CODE 4310-40-M

[Groups 837 and 840]

California; Filing of Plat of Survey

October 17, 1985.

1. These plats of the following described land will be officially filed in the California State Office, Sacramento, California effective 7:30 a.m., December 2, 1985.

Mount Diablo Meridian, Inyo County

(See legal description below)

2. These plats representing:

a. The dependent resurvey of a portion of the subdivisional lines, Township 17 South, Range 37 East, and the dependent resurvey of portion of the south boundary and a portion of the subdivisional lines, and the survey of a portion of the subdivisional lines, and the survey of a portion of the north boundary and a portion of the subdivisional lines, Township 18 South, Range 36 East, Mount Diablo Meridian, under Group No. 840, California were accepted September 19, 1985.

b. The dependent resurvey of a portion of the Fifth Standard Parallel South, along a portion of the north boundary, the completion survey of sections 2, 11, 14, and a portion of section 1, and the survey of the subdivision of section 11 and a portion of section 1, Township 21 South, Range 37 East, Mount Diablo Meridian, under Group No. 837, California was accepted September 20, 1985.

4. These plats were executed to meet certain administrative needs of the Bureau of Land Management and the Department of Agriculture, U. S. Forest Service.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records and Information Section.

[FR Doc. 85-25446 Filed 10-23-85; 8:45 am]

BILLING CODE 4310-40-M

[Group 905]

California; Filing of Plat of Survey

October 16, 1985.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, Shasta County

T. 32 N., R. 5 W.

2. This plat, representing the dependent resurvey of a portion of the subdivisional lines, Mineral Survey No. 4431, and the 1866 meanders of the right bank of the Sacramento River in section 28, and the survey of the meanders of the left bank of the Sacramento River in section 28, and the survey of the subdivision of section 28, of Township 32 North, Range 5 West, Mount Diablo Meridian, under Group No. 905, California, was accepted September 24, 1985.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Bureau of Land Management.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records and Information Section.

[FR Doc. 85-25447, Filed 10-23-85; 8:45 am]

BILLING CODE 4310-40-M

[Groups 902 and 827]

California; Filing of Plat of Survey

October 17, 1985.

1. These supplemental plats of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, Lake & Sierra Counties

(See legal description below)

2. These plats, representing:

a. The dependent resurvey of a portion of the subdivisional lines, and the survey of the subdivision of section 10, Township 13 North, Range 6 West, Mount Diablo Meridian, under Group No. 902, California, was accepted September 24, 1985.

b. The dependent resurvey of a portion of the north boundary and subdivisional lines, and the survey of the subdivision of section 3, of Township 22 North, Range 12 East, and the dependent resurvey of a portion of the subdivisional lines, and the survey of the subdivision of sections 20 and 21, of Township 23 North, Range 11 East, and the dependent resurvey of a portion of the subdivisional lines, and a portion of Mineral Survey No. 5697, and the survey of the subdivision of sections 9 and 17, of Township 23 North, Range 12 East, Mount Diablo Meridian, under Group No. 827, California were accepted September 27, 1985.

4. These plats were executed to meet certain administrative needs of the Bureau of Land Management and the Department of Agriculture, U.S. Forest Service.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage

Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records and Information Section.

[FR Doc. 85-25448, Filed 10-23-85; 8:45 am]

BILLING CODE 4310-40-M

[Group 909]

California; Filing of Plat of Survey

October 17, 1985.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, Inyo County

T. 7 S., R. 32 E.

2. This plat, representing the dependent resurvey of a portion of the subdivisional lines, and the metes-and-bounds survey of Lot 1, section 25, Township 7 South, Range 32 East, Mount Diablo Meridian, under Group No. 909, California, was accepted September 24, 1985.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Bureau of Land Management.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records & Information Section.

[FR Doc. 85-25449, Filed 10-23-85; 8:45 am]

BILLING CODE 4310-40-M

[C-16-85, C-12-85 and C-07-85]

California; Filing of Plat of Survey

October 18, 1985.

1. These supplemental plats of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, El Dorado, Siskiyou, Mariposa & Madera Counties

(See below for legal description)

2. These supplemental plats of:

a. The NE $\frac{1}{4}$, section 19, Township 12 North, Range 10 East, Mount Diablo Meridian, California, showing amended lottings, is based upon the plat approved May 8, 1903, plat accepted November 29,

1961 and the mineral survey records, was accepted September 30, 1985.

b. The NW $\frac{1}{4}$ NW $\frac{1}{4}$, section 14, Township 2 South, Range 26 East, Mount Diablo Meridian, California, showing amended lottings, is based upon the plats accepted February 28, 1950, December 3, 1970, and February 24, 1982, was accepted September 26, 1985.

c. The SE $\frac{1}{4}$, section 6, Township 39 North, Range 3 West, Mount Diablo Meridian, California, showing amended lotting created by the cancellation of the Victoria Mine lode, is based upon the plat approved May 25, 1983, the mineral segregation survey diagram dated November 9, 1910 and the mineral segregation survey record, was accepted September 23, 1985.

3. These supplemental plats will immediately become the basic record of describing the land for all authorized purposes. These supplemental plats have been placed in the open files and are available to the public for information only.

4. These supplemental plats were executed to meet certain administrative needs of the Bureau of Land Management and the Department of Agriculture, U.S. Forest Service.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records & Information Section.

[FR Doc. 85-25450, Filed 10-23-85; 8:45 am]

BILLING CODE 4310-40-M

[C-8-85]

California; Filing of Plat of Survey

October 18, 1985.

1. This supplemental plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, Shasta, Trinity Counties

T. 37 N., R. 5 W.

2. This supplemental plat of the SE $\frac{1}{4}$, section 13, Township 37 North, Range 5 West, Mount Diablo Meridian, California, showing new lotting, is based upon the plat approved March 27, 1884, and the mineral survey record, was accepted September 19, 1985.

3. This supplemental plat will immediately become the basic record of describing the land for all authorized purposes. This supplemental plat has

been placed in the open files and is available to the public for information only.

4. This supplemental plat was executed to meet certain administrative needs of the Bureau of Land Management.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records & Information Section.

[FR Doc. 85-25451 Filed 10-23-85; 8:45 am]

BILLING CODE 4310-40-M

[Group 838]

California; Filing of Plat of Survey

October 18, 1985.

1. These plats of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, San Luis Obispo County

T. 31 S., R. 19 E.

T. 31 S., R. 20 E.

2. These plats, representing the dependent resurvey of a portion of the east and north boundaries, a portion of the subdivisional lines, and the survey of the subdivision of sections 1, 2, 11, 12, and 14, Township 31 South Range 19 East, and the dependent resurvey of a portion of the south boundary, a portion of the subdivisional lines, and the survey of the subdivision of sections 17, 19, and 20, Township 31 South, Range 20 East, Mount Diablo Meridian, under Group No. 838, California, were accepted September 18, 1985.

3. These plats will immediately become the basic record of describing the land for all authorized purposes. These plats have been placed in the open files and are available to the public for information only.

4. These plats were executed to meet certain administrative needs of the Bureau of Land Management.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records & Information Section.

[FR Doc. 85-25452 Filed 10-23-85; 8:45 am]

BILLING CODE 4310-40-M

[AA-48321-U]

Alaska; Proposed Reinstatement of a Terminated Oil and Gas Lease

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97-451), a petition for reinstatement of oil and gas lease AA-48321-U has been received covering the following lands:

Copper River Meridian, Alaska

T. 13 N., R. 10 W.,

Sec. 11, S $\frac{1}{2}$. (303.50 acres)

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to \$5 per acre per year, and royalty increased to 16% percent. The \$500 administrative fee and the cost of publishing this Notice have been paid. The required rentals and royalties accruing from February 1, 1985, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA-48321-U as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective February 1, 1985, subject to the terms and conditions cited above.

Dated: October 16, 1985.

Kay F. Kletka,

Acting Chief, Branch of Mineral Adjudication.

[FR Doc. 85-25439 Filed 10-23-85; 8:45 am]

BILLING CODE 4310-JA-M

[Colorado 38426 C]

Colorado; Proposed Reinstatement

Notice is hereby given that a petition for reinstatement of oil and gas lease C-38426 C for lands in Huerfano County, Colorado was timely filed and was accompanied by all the required rentals and royalties accruing from April 1, 1985, the date of termination.

The lessee has agreed to new lease terms for rentals and royalties at rates of \$5.00 and 16 % percent, respectively.

The lessee has paid the required \$500 administrative fee for the lease and has reimbursed the Bureau of Land Management for the estimated cost of this Federal Register notice.

Having met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920, as amended, (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective April, 1985, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Questions concerning this notice may be directed to Karen Purvis of the Colorado State Office at (303) 294-7600.

Evelyn W. Axelson,

Chief, Mineral Leasing Section.

[FR Doc. 85-25440 Filed 10-23-85; 8:45 am]

BILLING CODE 4310-JB-M

[M 57789]

Order Providing For Opening of Public Land; Madison County, MT

AGENCY: Bureau of Land Management, Interior.

ACTION: Order Providing for Opening of Public Land in Madison County, Montana.

SUMMARY: This order will open certain lands that were segregated from all the nondiscretionary public land laws, including the mining laws, by the Notice of Realty Action published in the Federal Register August 30, 1984 (49 FR 34415).

DATE: At 9 a.m. on December 16, 1985, the lands described below will be open to the operation of the public land laws, subjects to valid existing rights, the provisions of existing withdrawals and the requirements of applicable law:

Principal Meridian, Montana

T. 2S., R. 2 W.,

Sec. 31, lots 2, 3, 4, 5, 7, 8, 9, 10, 11 and 12;
sec. 32, lots 1, 2, 3, NE $\frac{1}{4}$ SW $\frac{1}{4}$.

Containing 520.39 acres.

FOR FURTHER INFORMATION CONTACT:

Edward H. Croteau, Chief, Lands Adjudication Section, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, Phone (406) 657-6082. October 16, 1985.

James Binando,

Acting Deputy State Director, Division of Lands and Renewable Resources.

[FR Doc. 85-25441 Filed 10-23-85; 8:45 am]

BILLING CODE 4310-DN-M

Realty Action, Competitive Sale of Public Lands in Bonneville County, ID

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Realty Action, Competitive Sale of Public Lands in Bonneville County, Idaho.

DATES AND ADDRESSES: The sale offering will be held on Tuesday, January 17, 1986 at 1:00 p.m. at the Idaho Falls District Office, 940 Lincoln Road, Idaho Falls, Idaho 83401. Any unsold parcels will be reoffered for sale beginning January 14, 1986 at 1:00 p.m.

and continuing thereafter every Tuesday through February 25, 1986.

SUMMARY: The following described lands have been examined and through the public supported land use planning process have been determined to be suitable for disposal under section 203(a) of the Federal Land Policy and Management Act of 1976, for no less than the appraised fair market value (FMV):

Tract	Legal description	Appraised value
I-19736	T. 1 N., R. 44 E., B.M. Sec. 17: S $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ (5 acres).	\$7,500
I-20368	T. 1 N., R. 44 E., B.M. Sec. 17: E $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ (7.5 acres).	9,900
I-20628	T. 1 N., R. 44 E., B.M. Sec. 17: NE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ (3.75 acres).	5,500

When patented, the lands will be subject to the following reservations:

Parcel and reservations

- I-19736: Ditches and Canals (43 U.S.C. 945), all Leasable Minerals, Road right-of-way Serial No. I-21969 held by H.V. Davidge.
 I-20368: Ditches and Canals (43 U.S.C. 945), all Leasable Minerals, Utility and Access reservation to the United States.
 I-20628: Ditches and Canals (43 U.S.C. 945), all Leasable Minerals.

The previously mentioned right-of-way holders continued use of the land is proper, subject to the terms and conditions of the grant. Administrative responsibility previously held by the United States will be assumed by the patentee.

The lands are hereby segregated from appropriation under the public land laws including the mining laws for a period of 270 days or until patent is issued, whichever comes first.

These parcels will be sold as described by the Government Land Office Survey of 1898.

Sale Procedures: All sale parcels will be sold by competitive bidding procedures as follows: A sealed bid must be submitted in person or by mail prior to the date and time of sale in the Idaho Falls District Office located at 940 Lincoln Road, Idaho Falls, Idaho 83401.

The bid must be sealed in an envelope and contain the words "Sealed Bid—Public Land Sale" in addition to the parcel number and sale date. If two or more valid sealed bids in the same amount are received and they are the high bid, a supplemental bidding of the high bidders will be held.

Bids must be submitted for at least fair market value and will constitute an application to purchase the mineral estate of no known value for all three

parcels. A thirty percent (30%) deposit must accompany each bid. In addition, a \$50 non-returnable mineral conveyance processing fee is required. The filing fee and deposit must be paid by certified check, money order, bank draft or cashier's check. Bids will be rejected if accompanied by a personal check.

SUPPLEMENTARY INFORMATION: Detailed information concerning the conditions of the sale can be obtained by contacting Scott Powers, realty specialist at the above address or by calling (208) 529-1020 during office hours.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management, 940 Lincoln Road, Idaho Falls, Idaho 83401. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of Interior.

October 17, 1985.

Bernard Jansen,
Acting District Manager.

[FR Doc. 85-25442 Filed 10-23-85; 8:45 am]

BILLING CODE 4310-GG-M

[M-65552]

Realty Action A Competitive Sale of Public Land, (ND) in Bowman County, ND, Amendment

SUMMARY: This notice amends the fair market value of a Competitive Sale of Public Land published in the **Federal Register**, Vol. 50, No. 133, pages 28276 and 28277, issue of Thursday, July 11, 1985, (FR Doc. 85-16532).

The fair market value of the land is \$3400.00.

Dated: October 17, 1985.

Gene C. Campbell,
Acting District Manager.

[FR Doc. 85-25443 Filed 10-23-85; 8:45 am]

BILLING CODE 4310-DN-M

Minerals Management Service

Development Operations Coordination Document; Arco Oil and Gas Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that ARCO Oil and Gas Company has submitted a DOCD describing the

activities it proposes to conduct on Leases OCS-G 5495 and 3782, Blocks 173 and 174, respectively, Eugene Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Amelia, Louisiana.

DATE: The subject DOCD was deemed submitted on October 11, 1985.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: October 16, 1985.

John L. Rankin,
Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-25409 Filed 10-23-85; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Chevron Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Chevron U.S.A. Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 3577, Block 69, Ship Shoal Area, offshore Louisiana. Proposed plans for the above area provide for the development and

production of hydrocarbons with support activities to be conducted from an onshore base located at Morgan City, Louisiana.

DATE: The subject DOCD was deemed submitted on October 11, 1985.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: October 16, 1985.

John L. Rankin,
Regional Director, Gulf of Mexico OCS
Region.

[FR Doc. 85-25410 Filed 10-23-85; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Kerr-McGee Corp.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Kerr-McGee Corporation has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 6805, Block 93, Main Pass Area, offshore Louisiana and Mississippi. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Hopedale, Louisiana.

DATE: The subject DOCD was deemed submitted on October 15, 1985.

Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the DOCD from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44396, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised Section 250.34 of Title 30 of the CFR.

Dated: October 17, 1985.

John L. Rankin,
Regional Director, Gulf of Mexico OCS
Region.
[FR Doc. 85-25411 Filed 10-23-85; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Texaco USA

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Texaco USA has submitted a DOCD describing the activities it proposes to conduct on Lease OCS 0310, Block 238, South Marsh Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from onshore bases located at Louisa and Morgan City, Louisiana.

DATE: The subject DOCD was deemed submitted on October 15, 1985.

ADDRESS: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: October 17, 1985.

John L. Rankin,
Gulf of Mexico OCS Region.
[FR Doc. 85-25400 Filed 10-23-85; 8:45 am]
BILLING CODE 4310-MR-M

Environmental Documents Prepared for Proposed Oil and Gas Operations on the Alaska Outer Continental Shelf

ACTION: Notice of availability of environmental documents prepared for

Outer Continental Shelf (OCS) mineral prelease and exploration proposals on the Alaska OCS.

SUMMARY: The Minerals Management Service (MMS), in accordance with Federal regulations (40 CFR, Sections 1501.4 and 1506.6) that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related environmental assessments (EA's) and findings of no significant impact (FONSI's) prepared by the MMS for the following oil and gas prelease and exploration activities proposed on the Alaska OCS. The listing includes all proposals for which environmental documents were prepared by the Alaska OCS Region in the 3-month period preceding this notice.

Activity/Operator

Exploration Drilling Program for Beaufort Sea (Sale 87), Amoco Production Company, as operator for itself and others.

Location

Amoco is proposing to drill two exploratory wells from the Kulluk (a floating, ice-strengthened drilling vessel). The location of the first well has not been determined. Subsequent wells will depend upon the results of drilling, testing, and evaluation of the initial well. The location of Amoco's leases is described as follows:

LEASE AND BLOCK NUMBERS

Lease	Block	Protraction diagram
OCS-Y 0912	705	NR 7-3
OCS-Y 0913	706	NR 7-3
OCS-Y 0910	662	NR 7-3
OCS-Y 0917	724	NR 7-3
OCS-Y 0918	725	NR 7-3
OCS-Y 0926	769	NR 7-3
OCS-Y 0892	772	NR 6-4
OCS-Y 0886	728	NR 6-4

Environmental Assessment

No. AK 85-07.

FONSI Date

July 3, 1985.

Activity/Operator

Exploration Drilling Program for the Beaufort Sea (Sales 71 and 87), Exxon Company, U.S.A., as operator for itself and others.

Location

Exxon is proposing to drill up to a maximum of 27 exploratory wells using the Global Marine Concrete Island Drilling System. The location of the first well to be drilled has not been determined. Subsequent wells will depend upon the results of drilling,

testing, and evaluation of the initial well. The location of Exxon's leases is described as follows:

LEASE AND BLOCK NUMBERS

Lease	Block(s)	NR protraction
OCS-Y:		
0350	2	5-4
0285	3	5-4
0734	598	5-1
0745	686	5-1
0750	730	5-1
0786	1011	5-1
0787	1012	5-1
0791	969	5-2
0792	973	5-2
0800	44D, 1D, 2D (west)	5-3, 5-4
0802	4	5-4
0803	5	5-4
0804	8	5-4
0805	9	5-4
0806	10	5-4
0818	2D(east), 46D, 47D, 48D	5-4

Environmental Assessment

No. AK 85-08.

FONSI Date

July 10, 1985.

Activity/Operator

Modification of Exploration Drilling Program in the Beaufort Sea (Sale 71) for Shell Western E and P, Inc., as operator for itself and others. Shell has an approved Exploration Plan to drill up to four exploratory wells on Sandpiper gravel island. Shell has submitted an amendment to their approved Exploration Plan. The amendment is for an exception to the seasonal drilling stipulation and for conduct of a study on the possible effects of drilling noise from a gravel island on migrating bowhead whales. The proposal will require a one-time exception from the requirements of Sale 71, Stipulation 5 which prohibits exploratory drilling during the bowhead whale migration. This FONSI and associated EA address the possible effects of the exception and benefits of the study at Sandpiper gravel island.

Location

Lease	Block(s)
OCS-Y:	
0370	423
	424
0373	425

Environmental Assessment

Addendum to EA No. AK 84-01.

FONSI Date

August 26, 1985.

Activity/Operator

Assessment of potential effects to the environment from leasing of the proposed North Aleutian Basin sale area (Sale 92) as defined in the Department of the Interior (DOI) Federal Register Notice of September 10, 1985. The potential effects of a revision in resource estimates were compared to those analyzed in the final Environmental Impact Statement.

Location

Proposed North Aleutian Basin (Sale 92) sale area as defined in DOI Federal Register Notice of September 10, 1985.

Environmental Assessment

Proposed North Aleutian Basin Lease Sale (Sale 92) September 1985.

FONSI Date

September 30, 1985.

SUPPLEMENTARY INFORMATION: The MMS prepares EA's and FONSI's for proposals which relate to exploration for oil and gas resources on the Alaska OCS.

The EA's examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. The EA's are used as a basis for determining whether or not approval of the proposals constitute major Federal actions that significantly affect the quality of the human environment in the sense of NEPA Section 102(s)(C). A FONSI is prepared in those instances where the MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis of that finding and includes a summary or copy of the EA.

The FONSI and associated EA for the activity listed above are available for public inspection between the hours of 7:30 a.m. and 4:30 p.m., Monday through Friday at:

Minerals Management Service, Alaska OCS Region, 949 East 36th Avenue, Room 502, Anchorage, Alaska 99508. Phone: (907) 261.4435.

Persons interested in reviewing specific environmental documents, or obtaining information about EA's and FONSI's prepared for activities on the Alaska OCS, are encouraged to contact the above listed MMS office.

This notice constitutes the public notice of availability of environmental

documents required under the NEPA regulations.

Irven F. Palmer, Jr.,

Acting Regional Director.

[FR Doc. 85-25421 Filed 10-23-85; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf (OCS) Advisory Board; Meeting

This notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Pub. L. 92-463, 5 U.S.C. Appendix I, and the Office of Management and Budget's Circular A-63 Revised.

The Scientific Committee of the Outer Continental Shelf Advisory Board will meet in plenary session on Thursday and Friday, November 14-15, 1985, in the Top Deck of Discovery, Marine Mammal Pavilion, New England Aquarium, Central Wharf, Boston, Massachusetts 02110. The Committee will meet during the period 9 a.m. to 5 p.m. on Thursday and 9 a.m. to 4 p.m. on Friday.

Agenda for the meeting will include the following subjects:

- Charge of the Scientific Committee
- Current Environmental Studies Program Status
- Minerals Management Service Fisheries Studies
- Requests for Action on Specific Proposals
- Regional Studies Programs
- Regional Concerns

The meeting of this committee is open to the public. Approximately 40 visitors can be accommodated on a first-come/first-served basis. All inquiries concerning this meeting should be addressed to: Dr. Don Aurand, Chief, Branch of Environmental Studies, Offshore Environmental Assessment Division (644), Minerals Management Service, U.S. Department of the Interior, 18th & C Streets, NW., Washington, DC 20240; telephone: (202) 343-7744.

Dated: October 21, 1985.

John B. Rigg,

Associate Director for Offshore Minerals Management.

[FR Doc. 85-25382 Filed 10-23-85; 8:45 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 388 (Sub-11)]

Intrastate Rail Rate Authority; Kentucky

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision.

SUMMARY: The Commission has granted final certification to the State of Kentucky through the Railroad Commission of Kentucky under 49 U.S.C. 11501(b) to regulate intrastate rail transportation for a 5-year period, subject to the conditions precedent that it make the changes as set forth in the decision, and notify us, before the date on which certification is scheduled to begin, that it has made (or if unable to do so within this time, that it will make) the required modifications, and that its modified standards and procedures have been officially and finally adopted. If Kentucky does not make (or does not notify us that it will make) the required changes, its certification will remain provisional.

DATES: Certification will be effective on November 25, 1985.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: October 15, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley and Strenio.

James H. Bayne,

Secretary.

[FR Doc. 85-25316 Filed 10-23-85; 8:45 am]

BILLING CODE 7035-01-M

[Vol. OP2-475; F.D. 30719]

Motor Carriers; Finance Applications

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed continuance in control of motor and water common carriers under 49 U.S.C. 11343.

SUMMARY: The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by 49 CFR 1182.1.

Persons wishing to oppose an application must follow the rules under 49 CFR 1182.2. If the protest includes a request for oral hearing, the request shall meet the requirements of 49 CFR

1182.3 and shall include the required certification. Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding.

In the absence of legally sufficient protests as to the finance application or to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

Findings

The findings for these applications are set forth at 49 CFR 1182.6.

DATES: Comments are due on or before December 9, 1985.

ADDRESSES: Send comments to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423 and

(2) Applicants' representative: D.R. Beeler, P.O. Box 704, Franklin, TN 37065

Comments should refer to Finance Docket No. 30719.

FOR FURTHER INFORMATION CONTACT: Warren C. Wood, (202) 275-7977.

SUPPLEMENTARY INFORMATION: By application under 49 U.S.C. 11343, Joseph C. Calore, Sr., Barbara A. Calore, and John Quatrucchi seek Commission approval for their continuance in control of Calore Freight System, Inc. (Freight) (No. MC-15770) and Calore Rigging Corp. (Rigging) (No. WC-1413).

Mr. Calore, Ms. Calore, and Mr. Quatrucchi seek authority for their continuance in control of Freight (MC-15770) and its wholly-owned subsidiary, Rigging, a recently licensed water carrier holding authority in No. WC-1413. Mr. Calore owns all of the stock of both companies. The officers of both companies are Mr. Calore Ms. Calore. The directors of both firms are the Calores and Mr. Quatrucchi.

James H. Bayne,

Secretary.

[FR Doc. 85-25395 Filed 10-23-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to Clean Water Act; Pasadena, TX

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that on September 11, 1985, a proposed consent decree in *United States v. City of Pasadena, Texas, et al.*, Civil Action No. H-84-3896, was lodged with the United States District Court for the Southern District of Texas, Houston Division. This consent decree settles a lawsuit filed September 21, 1984, pursuant to section 309 of the Clean Water Act ("the Act"), 33 U.S.C. 1319, for injunctive relief and for assessment of a civil penalty against the City of Pasadena, Texas ("the City"). The complaint alleged, among other things, that the City: discharged pollutants into navigable waters in excess of the authorization in the City's National Pollutant Discharge Elimination System ("NPDES") permits; discharged pollutants into navigable waters in a manner that bypassed the treatment plants; failed to correct design deficiencies in one of the plants; failed to correct inflow and influent problems in the City's wastewater collection system; failed to operate and maintain one of the sewage treatment plants in an adequate manner; failed to repair construction defects; failed to measure or report bypasses of the plants; and failed to report properly sampling results. The complaint alleged that these acts and omissions constituted violations of section 301 of the Act, 33 U.S.C. 1311, and the NPDES permits issued to the City for its sewage treatment plants pursuant to section 402 of the Act, 33 U.S.C. 1342.

The State of Texas was named as a Defendant pursuant to section 309(e) of the Act, which states that a State shall be liable for payment of a judgment, or any expenses incurred as a result of complying with any judgment, entered against a municipality to the extent that State laws prevent the municipality from raising revenues needed to comply with the judgment.

Under the terms of the proposed consent decree, the City will undertake a program to attain and thereafter maintain compliance with its NPDES permits and the Clean Water Act, including: upgrading one of the two treatment plants at which violations occurred; upgrading a third treatment facility owned and operated by the City; discontinuing all bypassing of treatment facilities; and rehabilitating the City's wastewater collection system to reduce infiltration and inflow. The proposed consent decree also calls for stipulated

penalties against the City for failure to meet any of the deadlines set by the decree or failure to meet any of the interim effluent limitations set by the decree. Also, the proposed decree calls for the City to pay a civil penalty of \$160,000 with respect to the violations of the Clean Water Act alleged in the complaint.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530. All comments should refer to *United States v. City of Pasadena, Texas, et al.*, D.J. Ref. 90-5-1-1-2178.

The proposed consent decree may be examined at the following offices of the United States Attorney and the Environmental Protection Agency ("EPA"):

EPA Region VI

Contact: B. Ralph Corley, Office of Regional Counsel, U.S. Environmental Protection Agency, Region VI, 1201 Elm Street, Dallas, Texas 75270, (214) 767-9971

United States Attorney's Office

Contact: Frances Stacy, Assistant United States Attorney, Southern District of Texas, U.S. Federal Building and Courthouse, 515 Rusk, Room 12517, Houston, Texas 77002, (713) 229-2693

Copies of the proposed consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, D.C. 20530. A copy of the proposed consent decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

F. Henry Habicht II,

Assistant Attorney General Land and Natural Resources Division.

[FR Doc. 85-25414 Filed 10-23-85; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Partial Consent Decree Pursuant to Clean Water Act and Refuse Act; Marine Power and Equipment Co. et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on September 26, 1985, a

proposed partial consent decree in *United States v. Marine Power and Equipment Company, et al.*, Civil Action No. C85-382R was lodged with the United States District Court for the Western District of Washington. The complaint filed by the United States alleged violations of the Clean Water Act and Refuse Act by defendants, due to their discharge of pollutants and refuse into the Duwamish River and Lake Union from ship repair facilities in Seattle. The complaint sought: (1) An injunction against the illegal discharge of pollutants and refuse, (2) civil penalties and (3) a study to determine the nature and extent of the damage caused by the illegal discharges. The partial consent decree provides for a stay of the civil action during criminal investigation or proceedings involving the same incidents. During the stay, defendants will adopt specified work practices to reduce discharges, and will apply for an NPDES permit.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed partial consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States of America v. Marine Power and Equipment Company, Inc., et al.* D.J. Ref. 90-5-1-1-2361.

The proposed partial consent decree may be examined at the office of the United States Attorney, 3600 Seafirst Fifth Avenue Plaza, Seattle, Washington 98104 and at the Region X Office of the Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101. Copies of the partial consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1521, Ninth Street and Pennsylvania Avenue, NW., Washington, D.C. 20530. A copy of the proposed partial consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of \$1.40 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 85-25413 Filed 10-23-85; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL SCIENCE FOUNDATION**Advisory Committee for Astronomical Sciences; Meeting**

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Subcommittee on Large Optical/Infrared Telescopes.

Date and Time: November 12, 1985, 9 AM-5 PM.

Place: Room 615F, National Science Foundation, 1800 G Street, NW, Washington, DC.

Type of meeting: Open.

Contact person: Dr. Laura P. Bautz, Director, Division of Astronomical Sciences, Room 615, National Science Foundation, Washington, DC 20550, 202/357-9488.

Summary minutes: May be obtained from the contact person at the above address.

Purpose of committee: In the light of recent technological advances and large telescopes being planned in the U.S. and elsewhere, the subcommittee is asked to examine the scientific rationale and current plans and to advise on appropriate future directions for the Foundation's support of technology development and planning for a large optical/infrared telescope for the remainder of the decade.

Agenda: 9 AM-5 PM: Discussion of community response to Dear Colleague letter; discussion of technical issues of mirror development; develop issues for preliminary draft; set date for next meeting.

Dated: October 21, 1985.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 85-25372 Filed 10-23-85; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Biological Instrumentation; Meeting

In accordance with the Federal Advisory Committee Act, as amended Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Biological Instrumentation.

Date and time: Friday, November 8, 1985 from 8:30 to 7:30 p.m. and Saturday, November 9, 1985 from 8:30 a.m. to 6:00 p.m.

Place: Shoreham Hotel, 2500 Calvert Street, NW, Washington, DC 20008.

Type of meeting: Closed.

Contact person: John C. Wooley, Program Director, Biological Instrumentation, Room 325E, Telephone: 202/357-7652.

Purpose of advisory panel: To provide advice and recommendations concerning support for research instrumentation.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary

or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

Dated: October 21, 1985.

Rebecca Winkler,

Committee Management Officer.

[FR Doc. 85-25368 Filed 10-23-85; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Economics; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Economics.

Date and time: November 8 & 9, 1985, 9:00 a.m. to 5:00 p.m.

Place: The Highland Hotel, 1914 Connecticut Avenue, NW, Washington, DC.

Type of meeting: Closed.

Contact: Drs. Daniel H. Newlon and Lynn P. Pollnow, Program Directors, Division of Social and Economic Science, Room 312, National Science Foundation, Washington, DC 20550. Telephone (202) 357-9674.

Purpose of subcommittee: To provide advice and recommendations concerning economic research.

Agenda: Closed: to review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

Dated: October 21, 1985.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 85-25369 Filed 10-23-85; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Law and Social Sciences; Meeting

In accordance with the Federal Advisory Committee Act, as amended Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Law and Social Sciences.

Date and time: November 8th and 9th, 1985: 9:00 A.M. to 6:00 P.M. each day.

Place: Room G-1010, 10th Floor, National Science Foundation, 1800 G Street, NW, Washington, DC 20550.

Type of meeting: Closed.

Contact person: Dr. Felice J. Levine, Program Director, Law and Social Sciences, Room 312, National Science Foundation, Washington, DC 20550, telephone (202) 357-9567.

Purpose of panel: To provide advice and recommendations concerning support for research in Law and Social Sciences.

Agenda: Review and evaluate research and proposals and projects as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

Dated: October 21, 1985.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 85-25370 Filed 10-23-85; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Materials Research; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Materials Research Advisory Committee.

Place: Room 540, National Science Foundation, 1800 "G" Street, NW., Washington, DC 20550.

Date: Tuesday, November 12; and

Wednesday, November 13, 1985.

Time: 8:30 a.m.-5:00 p.m., those days.

Type of meeting: Open.

Contact person: Lewis H. Nosanow, Director, Division of Materials Research, Room 408, National Science Foundation, Washington, DC, 20550, Telephone: (202) 357-9794.

Summary minutes: May be obtained from the Contact Person, Dr. Lewis H. Nosenow at the above stated address.

Purpose of subcommittee: To provide advice and recommendations concerning support of materials research.

Agenda

Tuesday, November 12, 1985

- 8:30 a.m. Organizational matters; adoption of minutes.
- 9:00 a.m. Status Report on Division initiatives.
- 10:00 a.m. Briefing on MRL and MRG programs.
- 11:00 a.m. Discussion of planned briefing for National Science Board.
- 12:00 noon Lunch.
- 1:00 p.m. Discussion of Division's long range plans.
- 3:30 p.m. Briefing on materials research activities under the Strategic Defense Initiative.
- 5:00 p.m. Adjourn.

Wednesday, November 13, 1985

- 8:30 a.m. Organizational matters.
- 9:00 a.m. Meeting with NSF Director.
- 10:00 a.m. Plans for future MRAC meetings and activities.
- 11:00 a.m. Briefing on COSMAT II.
- 12:00 noon Lunch.
- 1:00 p.m. Update of Trends and Opportunities in materials research.
- 3:00 p.m. Discussion of role and participation of women, minorities and handicapped in materials research.
- 4:30 p.m. Chairman's summary and administrative matters.
- 5:00 p.m. Adjourn.

Dated: October 21, 1985.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 85-25373 Filed 10-23-85; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Political Science Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-46, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Political Science.

Date and Time: November 12 & 13, 1985.

9:00 a.m. to 5:00 p.m.

Place: Room 1242-B, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Type of meeting: Closed.

Contact: Drs. Frank P. Scioli, Jr. and Lee P. Sigelman, Program Directors, Social and Economic Science, Room 312, National Science Foundation, Washington, DC, 20550. Telephone (202) 357-9406.

Purpose of subcommittee: To provide advice and recommendations concerning Political Science research.

Agenda: Closed: to review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c). Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

Dated: October 21, 1985.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 85-25371 Filed 10-23-85; 8:45 am]

BILLING CODE 7555-01-M

Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Pub. L. 95-541.

SUMMARY: The Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice of permits issued.

FOR FURTHER INFORMATION CONTACT:

Charles E. Myers, Permit Office, Division of Polar Programs, National Science Foundation, Washington, D.C. 20550. Telephone (202) 357-7934.

SUPPLEMENTARY INFORMATION: On September 11, 1985, the National Science Foundation published a notice in the Federal Register of permit applications received. On October 17, 1985 permits were issued to: William M. Hamner, Lucia de Leiris and Jennifer Dewey, Wayne Z. Trivelpiece.

Charles E. Myers,

Permit Office, Division of Polar Programs.

[FR Doc. 85-25406 Filed 10-23-85; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-320]

General Public Utilities Nuclear Corp. (Three Mile Island Nuclear Station, Unit 2); Amendment of Order

I

GPU Nuclear Corporation, Metropolitan Edison Company, Jersey Central Power and Light Company and Pennsylvania Electric Company

(collectively, the licensee) are the holders of Facility Operating License No. DPR-73, which had authorized operation of the Three Mile Island Nuclear Station, Unit 2 (TMI-2) at power levels up to 2772 megawatts thermal. The facility, which is located in Londonderry Township, Dauphin County, Pennsylvania, is a pressurized water reactor previously used for the commercial generation of electricity.

II

By Order for Modification of License, dated July 20, 1979, the licensee's authority to operate the facility was suspended and the licensee's authority was limited to maintenance of the facility in the present shutdown cooling mode (44 FR 45271). By further Order of the Director, Office of Nuclear Reactor Regulation, dated February 11, 1980, a new set of formal license requirements was imposed to reflect the post-accident condition of the facility and to assure the continued maintenance of the current safe, stable, long-term cooling condition of the facility (45 FR 11292).

Although these requirements were imposed on the licensee by an Order of the Director of Nuclear Reactor Regulation, dated February 11, 1980, the TMI-2 license has not been formally amended. The requirements are reflected in the Recovery Mode Proposed Technical Specifications (PTS) presently pending before the Atomic Safety and Licensing Board. The revisions that are the subject of this order do not give the licensee authorizations that may be needed to undertake specific cleanup activities. Hereafter in this Amendment of Order, the requirements in question are identified by the applicable Proposed Technical Specification.

III

By letters dated April 12, 1985 and June 18, 1985, GPU Nuclear Corporation (GPUNC) requested that the PTS be modified. The requests consisted of changes to the PTS to conform with the requirements contained in the NRC Generic Letter 83-43, Reporting Requirements of 10 CFR Part 50, §§ 50.72 and 50.73, and the Standard Technical Specifications. Other changes requested by the licensee deleted requirements for equipment and monitoring that are no longer needed and proposed administrative and editorial changes to improve clarity. The licensee also requested that reference to the Programmatic Environmental Impact Statement be dropped from the definition of "review significant" as defined in PTS 1.14. The licensee is

currently required to make a determination as to whether or not documents implementing the cleanup or submitted to the NRC are bounded by the PEIS. In particular, the licensee has proposed changes to PTS 1.6, 3.0.3, 3.3.3.8, 3.4.2, 3.7.10.1, 3.7.10.2, 3.7.10.3, 6.5.2.5(d) and (e), 6.6, 6.9, 6.9.1.7, 6.9.1.8, 6.9.1.9, and 6.10.2(c); to conform to the provisions of 10 CFR § 50.72 or 50.73, as appropriate; to PTS 1.14, 3.4.9.1, 6.5.2.3, 6.5.2.5.a, 6.5.3.1, 6.9.1, and 6.9.2, to correct typographical errors or to clarify existing provisions or otherwise achieve consistency, without affecting the substance of the existing requirements; and to PTS 3.6.4 and 3.7.10.2, to delete requirements which are no longer necessary given the current status of the plant.

After reviewing the licensee's safety evaluations in the April 12, 1985 and June 18, 1985 letters and performing its own safety evaluation, the staff has concluded, with the exception noted below, that the requested changes are acceptable and has modified the appropriate sections of the PTS. The staff has determined that it is not appropriate to delete the PEIS as a document used to determine review significance; however, for those activities that are clearly within the scope of an NRC approved system description, SER or TER, no additional comparison to PEIS values is required. The text of the definition for "review significant" has been changed accordingly.

The staff's safety assessment of this matter as discussed above is set forth in the concurrently issued Safety Evaluation. Since the February 11, 1980 Order imposing the Proposed Technical Specifications is currently pending before the Atomic Safety and Licensing Board, the staff will be advising the Licensing Board of this Amendment of Order through a Notice of Issuance of Amendment of Order and a Motion to Conform Proposed Technical Specifications in Accordance Herewith.

This action involves changes to requirements with respect to the installation or use of a facility component located within the restricted area, as well as changes in recordkeeping, reporting or administrative procedures or requirements. The staff has determined that this action involves no significant increase in the amounts, and no significant change in the types, of any effluents that may be released offsite and that there is no significant increase in individual or cumulative occupational radiation exposure. Accordingly, this action meets the eligibility criteria for

categorical exclusion set forth in 10 CFR 51.22(c)(9) and (10). Pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the issuance of this action.

IV

Accordingly, pursuant to the Atomic Energy Act of the 1954, as amended, the Director's Order of February 11, 1980, is hereby revised to incorporate the deletions, additions, and modifications set forth in Enclosure 3 hereto. This Amendment of Order shall be effective on November 22, 1985.

For further details with respect to this action, see: (1) Letter to B.J. Snyder, USNRC, from F.R. Standerfer, GPUNC, Technical Specification Change Request 48 and Recovery Operations Plan Change Request 29, dated April 12, 1985, (2) Letter to B.J. Snyder, USNRC, from F.R. Standerfer, GPUNC, Technical Specification Change Request No. 50 and Recovery Operations Plan Change Request No. 32, dated June 18, 1985, and (3) the Director's Order of February 11, 1980.

All the above documents are available for inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Commission's Local Public Document Room at the State Library of Pennsylvania, Government Publications Section, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Effective Date: November 22, 1985.

Dated at Bethesda, Maryland.

Issuance Date: October 18, 1985.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Deputy Director, Office of Nuclear Reactor Regulation.

[FR Doc. 85-25426 Filed 10-23-85; 8:45 am]

BILLING CODE 7590-01-M

Ultra-Sensitive Uranium Bioassay and Nephrotoxicity of Uranium; Meeting

The Office of Nuclear Regulatory Research of the Nuclear Regulatory Commission (NRC) will conduct two consecutive public meetings on two topics relating to the protection of workers in uranium processing facilities. The first meeting will review the state-of-the-art of physical and chemical techniques for the measurement of very low levels of uranium in biological specimens. These techniques include fluorimetry, laser kinetic phosphorimetry, resonance ionization spectroscopy, thermal ionization mass spectroscopy, neutron activation

analysis, and radiometric methods involving pulse height analysis or other counting techniques. Such techniques of high sensitivity are needed because present detection limits are not sufficiently below recommended action levels to provide statistical assurance that action is necessary. The second meeting will focus on recent biological research related to the validity of the current nephrotoxic limit for uranium. Recent animal experiments suggest that this value should be lowered.

The NRC has invited U.S. scientists that have had extensive experience in developing uranium bioassay techniques or in conducting toxicological studies of uranium exposure, especially nephrotoxicity, to speak on these topics at these meetings. The meetings are intended to elicit: (1) Information regarding the strengths and weaknesses of available ultra-sensitive bioassay techniques and (2) to identify technical considerations regarding the current nephrotoxic limit for uranium. The meetings will also provide interested persons an opportunity to comment on or ask questions about these topics.

The meetings are open to the public, and interested persons are invited to attend one or both meetings and to present a statement or ask questions. Such statements will be limited to a maximum of ten minutes each. Those intending to present a statement at either meeting should make arrangements by telephone or in writing not later than November 15, 1985. Due to time constraints, it may become necessary to limit the number of statements on a "first request received" basis. Transcripts of each meeting will be available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC as soon as possible after the meeting.

The meetings will be held from 8:30 a.m. to 5:00 p.m. on December 3 and 4, 1985, in the auditorium of the General Services Administration Building, 18th and F Streets, NW., Washington, DC. For additional information or to register to make a statement, contact either Dr. Judith Foulke at (301) 427-4563 or Dr. R. B. Neel at (301) 427-4559.

Dated at Silver Spring, MD this 15th day of October 1985.

For the Nuclear Regulatory Commission.

Robert E. Alexander,

Chief, Health Effects and Occupational Radiation Protection Branches, RES.

[FR Doc. 85-25425 Filed 10-23-85; 8:45 am]

BILLING CODE 7590-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Mainstem Passage Advisory Committee; Meeting

AGENCY: The Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting.

STATUS: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Mainstem Passage Advisory Committee of the Mainstem Passage Advisory Committee to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1-4. Activities will include:

- Reservoir mortality curves and transportation for modelling purposes
- FISHPASS modelling results
- Spill cost estimate—BPA
- Other
- Public comment

DATE: October 25, 1985, 10:00 a.m.

ADDRESS: The meeting will be held in Room 210, Customs House, Corps of Engineers, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Peter Paquet, 503-222-5161.

Edward Sheets,
Executive Director.

[FR Doc. 85-25311 Filed 10-23-85; 8:45 am]

BILLING CODE 9000-00-M

Resident Fish Substitutions Advisory Committee; Meeting

AGENCY: The Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting.

STATUS: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Resident Fish Substitutions Advisory Committee to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1-4. Activities will include:

- Resident fish productivity report.
- Losses information discussion.
- Contributions issue scoping.
- Goals issues scoping.
- Other.
- Public comment.

DATE: November 5, 1985, 9:30 a.m.

ADDRESS: The meeting will be held at the Towers Building, 10th floor conference room, 450 W. State Street, Boise, Idaho.

FOR FURTHER INFORMATION CONTACT:

John Marsh, 503-222-5161.

Edward Sheets,

Executive Director.

[FR Doc. 85-25329 Filed 10-23-85; 8:45 am]

BILLING CODE 9000-00-M

SMALL BUSINESS ADMINISTRATION

[License No. 05/07-5080]

The Combined Fund, Inc.; Filing of Application for Transfer of Ownership and Control

Notice is hereby given that an application has been filed with the Small Business Administration (SBA), pursuant to § 107.601 of the Regulations governing small business investment companies (13 CFR 107.601 (1985)) for transfer of ownership and control of The Urban Fund of Illinois, Inc., 1525 East 53rd Street, Chicago, Illinois 60615, a Federal Licensee under the Small Business Investment Act of 1958, as amended (15 U.S.C. 681 *et seq.*). The proposed transfer of control of The Urban Fund of Illinois, Inc., which was licensed May 4, 1971, is subject to the prior written approval of SBA.

It is proposed that all of the outstanding voting Common stock of The Urban Fund of Illinois, Inc., will be purchased by Mr. E. Patric Jones, 1525 East 53rd Street, Chicago, Illinois 60615. Combined Opportunities, Inc., Small Business Investment Company, will be merged into The Urban Fund of Illinois, Inc. The Urban Fund of Illinois, Inc., will then change its name to The Combined Fund, Inc.

The management of The Combined Fund, Inc., will remain the same as exists in The Urban Fund of Illinois, Inc. The original shareholders of the common stock The Urban Fund of Illinois, Inc., Hyde Park Bank, Marina Bank, and First National Bank of Highland Park, will be the owners of Preferred Class "B" stock.

Combined Insurance Company of America, Inc., the present sole shareholder of Combined Opportunities, Inc., will be owner of Preferred Class "C" stock.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners, and the probability of successful operations of the company under their ownership, including adequate profitability and financial soundness, in accordance with the Act and the Regulations.

Notice is given that any person may, not later than 15 days from the date of publication of this Notice, submit

written comments on the proposed transfer of ownership and control to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, D.C. 20416.

A copy of this Notice will be published in a newspaper of general circulation in Chicago, Illinois.

Dated: October 10, 1985.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85-25337 Filed 10-23-85; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2210]

Connecticut: Declaration of Disaster Loan Area

The Counties of New Haven and New London and the adjacent Counties of Fairfield, Hartford, Litchfield, Tolland, Windham, and Middlesex in the State of Connecticut constitute a disaster area because of damage caused by Hurricane Gloria which occurred on September 27, 1985. Applications for loans for physical damage may be filed until the close of business on December 16, 1985, and for economic injury until the close of business on July 17, 1986, at the address listed below:

Disaster Area 1 Office, Small Business Administration, 15-01 Broadway, Fair Lawn, NJ 07410

or other locally announced locations.

The interest rates are:

	Percent
Homeowners with credit available elsewhere.....	8.000
Homeowners without credit available elsewhere.....	4.000
Businesses with credit available elsewhere.....	8.000
Businesses without credit available elsewhere.....	4.000
Business (EIDL) without credit available elsewhere.....	4.000
Other (non-profit organizations including charitable and religious organizations).....	10.500

The number assigned to this disaster is 221008 for physical damage and for economic injury the number is 634600.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 17, 1985.

James C. Sanders,
Administrator.

[FR Doc. 85-25340 Filed 10-23-85; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2214]

Virginia: Declaration of Disaster Loan Area

The County of Accomack and Tangier Island in the State of Virginia constitute a disaster area because of damage caused by Hurricane Gloria which occurred on September 27, 1985. Applications for loans for physical damage may be filed until the close of business on December 16, 1985, and for economic injury until the close of business on July 17, 1986, at the address listed below:

Disaster Area 2 Office, Small Business Administration, Richard B. Russell Federal Bldg., 75 Spring St., SW., Suite 822, Atlanta GA 30303

or other locally announced locations.

The interest rates are:

	Percent
Homeowners with credit available elsewhere.....	8.000
Homeowners without credit available elsewhere.....	4.000
Businesses with credit available elsewhere.....	8.000
Businesses without credit available elsewhere.....	4.000
Businesses (EIDL) without credit available elsewhere.....	4.000
Other (non-profit organizations including charitable and Religious Organizations).....	10.500

The number assigned to this disaster is 221408 for physical damage and for economic injury the number is 635000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 17, 1985.

James C. Sanders,
Administrator.

[FR Doc. 85-25341 Filed 10-23-85; 8:45 am]

BILLING CODE 8025-01-M

California; Region IX Advisory Council; Public Meeting

The U.S. Small Business Administration Region IX Executive

Board will hold a public meeting at 9:30 a.m. on Friday, November 8, 1985, at the Vagabond Inn-Midtown, 2550 Van Ness Avenue, San Francisco, California, to discuss such matters as may be presented by members, staff of the Small Business Administration and others attending.

For further information, write or call Miss Irenemaree Castillo, Regional Administrator, U.S. Small Business Administration, 450 Golden Gate Avenue, Box 36044, San Francisco, California 94102, (415) 556-7487.

Jean M. Nowak,

Director, Office of Advisory Councils.

October 16, 1985.

[FR Doc. 85-25338 Filed 10-23-85; 8:45 am]

BILLING CODE 8025-01-M

New York; Region II Advisory Council; Public Meeting

The U.S. Small Business Administration Region II Advisory Council, located in the geographical area of Syracuse, will hold a public meeting at 9:30 a.m. on Thursday, November 14, 1985, at the Federal Building, Room 1117, 100 South Clinton Street, Syracuse, New York, to discuss such matters as may be presented by members, staff of the Small Business Administration and others attending.

For further information, write or call J. Wilson Harrison, District Director, U.S. Small Business Administration, 100 South Clinton Street, Room 1071, Syracuse, New York 13260, (315) 423-5371.

Jean M. Nowak;

Director, Office of Advisory Councils.

October 16, 1985.

[FR Doc. 85-25339 Filed 10-23-85; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice CM-8/893]

Study Group C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that Study Group C of the U.S. Organization for the International

Telegraph and Telephone Consultative Committee (CCITT) will meet on November 13, 1985 at 9:30 a.m. in Room 918, AT&T Building, 1120 20th Street, NW., Washington, DC.

Study Group C deals with U.S. Government aspects of international telegram and telephone operations and tariffs.

The purpose of this meeting is to discuss the ongoing work of the Special "S" group regarding all aspects of the CCITT restructure in connection with preparation of a U.S. reply to a CCITT questionnaire.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Requests for further information should be directed to Mr. Earl Barbely, Department of State, Washington, D.C.; telephone (202) 632-5832.

Dated: October 11, 1985.

Earl S. Barbely,

Acting Director, Office of Technical Standards and Development.

[FR Doc. 85-25343 Filed 10-23-85; 8:45 am]

BILLING CODE 4717-07-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 85-090]

Proposed Fixed Highway Bridge, Charleston, SC; Hearing

AGENCY: Coast Guard, DOT.

ACTION: Notice of public hearing.

SUMMARY: Notice is hereby given that the Commandant has authorized a public hearing to be held by the Commander, Seventh Coast Guard District, at Charleston, South Carolina. The purpose of the hearing is to consider an application from the State of South Carolina for Coast Guard approval of the location and plans of a proposed fixed highway bridge across Wappoo Creek, Ashley River, and the North and

South Forks of Dill Creek on the proposed alignment of the James Island Expressway which begins on Folly Road (SC Route 171), approximately one mile south of Harbor View Road, and terminates at the Lockwood Drive and Calhoun Street intersection at Charleston, South Carolina.

All interested parties may present data, views and comments, orally or in writing, concerning the impact of the proposed bridge on navigation and the human environment. Of particular concern at this time are the effects that a fixed bridge with a vertical clearance of 55 feet above mean high water would have on navigation on the Ashley River. Comments that the proposed clearance is inadequate should, if possible, recommend a specific minimum vertical clearance and include appropriate justification. Desirable information would include: description of vessel, owner's name and address, height of highest fixed point above the waterline (exclusive of appurtenances unessential to navigation or easily lowered), mooring location, and frequency of operation upon the waterway. Comments are also solicited on the clearances proposed at Wappoo Creek and the North and South Forks of Dill Creek.

The Federal Highway Administration (FHWA), the lead federal agency, approved a Final Environmental Impact/4(f) Statement on February 17, 1976. A reevaluation was approved by the FHWA on July 24, 1985. Written comments on this proposal were previously solicited by Public Notice 42-85 issued by the Commander, Seventh Coast Guard District, on August 28, 1985. All comments received, or to be presented at the scheduled public hearing, will be fully considered in the permitting process. Presentations should include factual data to support comments received.

DATE: December 2, 1985 commencing at 6:30 p.m., until all speakers in attendance wishing to comment have provided comments.

ADDRESS: Memminger Auditorium, 20 Beaufain St., Charleston, South Carolina.

FOR FURTHER INFORMATION CONTACT: Mr. Gary D. Pruitt, Bridge Administration Specialist, Seventh Coast Guard District, 51 S.W. First Avenue, Miami, Florida, 33130-1681, (305) 536-4103.

SUPPLEMENTARY INFORMATION: The Coast Guard approved a fixed highway bridge along this same alignment on February 4, 1980. No work was accomplished and the permit expired on February 4, 1985. The State of South

Carolina has now submitted revised plans for a longer bridge structure along the previously approved alignment. These plans minimize the use of approach fill thereby reducing the wetlands to be filled by 4.6 acres. The proposed bridge would be 11,297 feet in length and provides the following minimum navigational clearances: Wappoo Creek, vertical clearance of 65 feet above mean high water with a horizontal clearance of 100 feet between fenders normal to the axis of the channel; Ashley River, vertical clearance of 55 feet above mean high water with a horizontal clearance of 110 feet between fenders normal to the axis of the channel; North and South Forks of Dill Creek, vertical clearance of nine feet above mean high water with a horizontal clearance spanning the entire waterways bank-to-bank.

The hearing will be informal. A Coast Guard representative will preside at the hearing, make a brief opening statement describing the proposed bridge project, and announce the procedures to be followed at the hearing. Each person who wishes to make an oral statement should notify the Commander (oan), Seventh Coast Guard District at the above address by November 25, 1985. Such notification should include the approximate time required to make the presentation.

It may be necessary to limit the time available to individual speakers in order to provide all commenters the opportunity to speak. Speakers are encouraged to provide written copies of their oral statements to the hearing officer. A transcript will be made of the hearing and may be purchased or reviewed by the public in the Seventh Coast Guard District office approximately 30 days after the hearing date.

Interested persons who are unable to attend this hearing may also participate in the consideration of the bridge permit application by submitting their comments in writing to the Commander (oan), Seventh Coast Guard District, by January 4, 1986. Each written comment should identify the proposed project, clearly state the reasons for any objections, comments or proposed changes to the plans, and include the name and address of the person or organization submitting the comment.

Copies of all written communications will be available for examination by interested persons at the office of the Commander (oan), Seventh Coast Guard District, between 7:30 a.m. and 4:00 p.m., Monday through Friday, except federal holidays. All comments received will be considered before final action is taken

on the proposed bridge permit application.

(Sec. 502, Act of August 2, 1946, as amended; 33 U.S.C. 525, 49 U.S.C. 1655(G)(6)(C); 49 CFR 1.46(c)(10))

Dated: October 11, 1985.

T.J. Wojnar,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation.

[FR Doc. 85-25428 Filed 10-23-85; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

Noise Exposure Map

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the St. Louis Regional Airport Authority for St. Louis Regional Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR Part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps is October 7, 1985.

FOR FURTHER INFORMATION CONTACT: Jerry R. Mork, Community Planner, Chicago Airports District Office, Federal Aviation Administration, 2300 E. Devon Avenue, Des Plaines, IL 60018.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for the St. Louis Regional Airport are in compliance with applicable requirement of Part 150, effective October 7, 1985.

Under section 103 of the Aviation Safety and Noise Abatement Act of 1979, (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations, Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for

FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the St. Louis Regional Airport Authority. The specific maps under consideration in the submission are:

The Noise Exposure Map and the tabular report of land use impact for 1985 conditions; and

The Noise Exposure Maps and tabular report of land use impact for the fifth calendar year conditions (i.e., 1990).

The FAA has determined that these maps for the St. Louis Regional Airport are in compliance with applicable requirements. This determination is effective on October 7, 1985. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours on the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 617, Washington, DC 20591

Federal Aviation Administration, Airports Division and Chicago Airports District Office, 2300 E. Devon Avenue, Des Plaines, IL 60018

Illinois Division of Aeronautics, Department of Transportation, Capital Airport, Springfield, Illinois 62706
St. Louis Regional Airport, 8 Terminal Drive, Suite 1, East Alton, Illinois 62024

Questions may be directed to the individual named above under the heading. **FOR FURTHER INFORMATION CONTACT.**

Issued in Des Plaines, Illinois.

Monte Belger,

Manager, Airports Division, Federal Aviation Administration, Great Lakes Region.

[FR Doc. 85-25310 Filed 10-23-85; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

[Number: 102-25]

Delegation of Authority to the Assistant Secretary (Management) To Make Certain Appellate Determinations Under the Freedom of Information Act, 5 U.S.C. 552, or the Privacy Act, 5 U.S.C. 552a

Dated: October 15, 1985.

Pursuant to the authority vested in me by 31 CFR Part 1, Subpart A, Appendix A, paragraph 4, and 31 CFR Part 1, Subpart C, Appendix A, paragraph 4, it is ordered that:

1. The Assistant Secretary (Management) shall issue final decisions on administrative appeals under 5 U.S.C. 552 or 5 U.S.C. 552a with respect to records which are within the custody of the Office of the Inspector General.

2. This order is effective immediately.

Richard G. Darman,

Deputy Secretary of the Treasury.

[FR Doc. 85-25396 Filed 10-23-85; 8:45 am]

BILLING CODE 4810-25-M

Internal Revenue Service

Senior Executive Service; Performance Review Board; Notice of Members

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of Members of Senior Executive Service Performance Review Board.

DATE: Performance Review Board effective October 15, 1985.

FOR FURTHER INFORMATION CONTACT: DiAnn Kiebler, PM:HR:P:EX, Room 3213, 1111 Constitution Avenue, NW, Washington, DC 20224. Telephone No. (202) 566-4633 (not a toll free number).

SUPPLEMENTARY INFORMATION: Pursuant to section 4314(c)(4) of the Civil Service Reform Act of 1978, the members of the Internal Revenue Service's Senior Executive Service Performance Review Board for Regional Commissioners, Assistant Commissioners and for senior executives in the Office of the Commissioner are as follows:

Philip E. Coates, Associate Commissioner (Operations)
Norman A. Bolz, Associate Commissioner (Policy & Management)
M. Eddie Heironimus, Associate Commissioner (Data Processing)
Robert L. Rebein, Assistant Commissioner (Inspection)

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive appearing in the *Federal Register* for Wednesday, November 8, 1978 (43 FR 52122).

James I. Owens,

Acting Commissioner.

[FR Doc. 85-25401 Filed 10-23-85; 8:45 am]

BILLING CODE 4830-01-M

Senior Executive Service; Performance Review Board; Notice of Members

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of Members of Senior Executive Service Performance Review Board.

DATE: Performance Review Board effective October 15, 1985.

FOR FURTHER INFORMATION CONTACT: DiAnn Kiebler, PM:HR:P:EX, Room 3213, 1111 Constitution Avenue, NW, Washington, DC 20224. Telephone No. (202) 566-4633, (not a toll free number).

SUPPLEMENTARY INFORMATION: Pursuant to section 4314(c)(4) of the Civil Service Reform Act of 1978, the members of the Internal Revenue Service's Senior Executive Service Performance Review Board for senior executives in the office of the Assistant Commissioner (Inspection) are as follows:

James I. Owens, Deputy Commissioner

John Layton, Inspector General,
Department of the Treasury
Jean Owens, Deputy Chief Counsel
This document does not meet the
criteria for significant regulations set
forth in paragraph 8 of the Treasury
Directive appearing in the *Federal
Register* for Wednesday, November 8,
1978 (43 FR 52122).

James I. Owens,

Acting Commissioner.

[FR Doc. 85-25402 Filed 10-23-85; 8:45 am]

BILLING CODE 4830-01-M

UNITED STATES INFORMATION AGENCY

Reporting and Information Collection Requirement Under OMB Review

AGENCY: United States Information
Agency.

SUMMARY: Under the provisions of the
Paperwork Reduction Act (44 U.S.C.
Chapter 35) agencies are required to
submit proposed or established
reporting and recordkeeping
requirements to OMB for review and
approval and to publish a notice in the
Federal Register notifying the public
that such a submission has been made.
USIA is requesting approval of an
information collection requiring the

submission of additional budgetary
information provided by non-profit
organizations applying for grants.

DATE: Comments must be received by
October 31, 1985.

Copies: Copies of the request for
clearance (SF-83), supporting statement,
instructions, transmittal letter and other
documents submitted to OMB for review
may be obtained from the USIA
Clearance Officer. Comments on the
item listed should be submitted to the
Office of Information and Regulatory
Affairs of OMB, Attention Desk Officer
for USIA.

FOR FURTHER INFORMATION CONTACT:

Dr. Albert Ball, Deputy Director, Office
of Private Sector Programs, Room 216,
301 Fourth Street, SW., Washington,
D.C. 20547, telephone (202) 485-7348.
OMB review: Michael Weinstein, Office
of Information and Regulatory Affairs,
Office of Management and Budget, New
Executive Office Building, Washington,
D.C. 20503, telephone (202) 395-4814.

SUPPLEMENTARY INFORMATION: Title:
"Request for Additional Budget Data in
Grant Proposals Submitted by Non-
Profit Organizations," covering Fiscal
Years 1986 and 1987. Public Law 99-93,
section 209 of the USIA FY 87
Authorization Act requires the Office of
Private Sector Programs to request
additional information in budget

submissions by non-profit organizations
applying for grants to assure all funds
received in relevant fiscal years
includes at least 15% (FY 86) or 25% (FY
87) of non-U.S. Government funding.

Dated: October 16, 1985.

Eileen K. Binns,

Chief, Management Plans and Analysis Staff,
[FR Doc. 85-25407 Filed 10-23-85; 8:45 am]

BILLING CODE 9230-01-M

United States Advisory Commission on Public Diplomacy; Meeting

A meeting of the U.S. Advisory
Commission on Public Diplomacy will
be held in Vienna on November 4-5,
1985. The Commission will observe
activities on USIA's post and regional
program center in Vienna and will
consult with senior USIA officers from
U.S. embassies in Belgrade, Budapest,
East Berlin, Moscow, Warsaw, Munich
and Salzburg.

Please call Gloria Kalamets, (202) 485-
2468, for further information.

Dated: October 15, 1985.

Charles N. Canestro,

*Management Analyst, Federal Register
Liaison.*

[FR Doc. 85-25408 Filed 10-23-85; 8:45 am]

BILLING CODE 9230-01-M

Sunshine Act Meetings

Federal Register

Vol. 50, No. 206

Thursday, October 24, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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Consumer Product Safety Commission	1
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1

CONSUMER PRODUCT SAFETY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 50 FR 42639, Monday, October 21, 1985.

PREVIOUSLY ANNOUNCED TIME OF MEETING: Thursday, October 24.

CHANGES IN THE MEETING: Meeting canceled.

Listed below is the canceled meeting: Commission Meeting, Room 456, 5401 Westbard Avenue, Bethesda, Maryland, Thursday, October 24, 1985. See times below.

Open to the Public

8:30 a.m.

1. Commission/Staff Briefing

The staff and the Commission will discuss various general CPSC matters.

Closed to the Public

9:30 a.m.

2. Enforcement Matter OS #3677

The staff will brief the Commission on issues related to enforcement matter OS #3677.

3. Compliance Status Report

The staff will brief the Commission on various enforcement matters.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301-492-6800.

Dated: October 22, 1985.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 85-25506 Filed 10-22-85; 12:35 pm]

BILLING CODE 6355-01-M

2

COPYRIGHT ROYALTY TRIBUNAL

TIME AND DATE: Monday, October 28, 1985, 1:00 p.m.

PLACE: 1111 20th Street, NW., Suite 450, Washington, DC 20036.

STATUS: Closed pursuant to a vote taken October 17, 1985.

MATTERS TO BE CONSIDERED:

Adjudication of the 1982 (remand) and the 1983 jukebox distribution proceeding.

CONTACT PERSON FOR MORE

INFORMATION: Robert Cassler, General Counsel, Copyright Royalty Tribunal, 1111 20th Street, NW., Suite 450, Washington, DC 20036, 202-653-5175.

Dated: October 17, 1985.

Edward W. Ray,

Acting Chairman.

Certification of Closed Meeting

The General Counsel of the Copyright Royalty Tribunal hereby certifies, pursuant to 5 U.S.C. 552b(f)(1), and pursuant to § 301.14(b) of the Tribunal's rules, 37 CFR 301.14(b), that the Tribunal's deliberations concerning the consolidated hearing of the 1982 (remand) and the 1983 jukebox distribution proceedings scheduled to occur on October 28, 1985 (and from time to time thereafter up to 30 days as the Tribunal may, pursuant to 37 CFR 301.14(a), find appropriate) may properly be closed to public observation.

The relevant exemptions on which this certification is based are set forth in the following provisions of law:

5 U.S.C. 552b(c)(10) (adjudication)
37 CFR 301.13(i) (adjudication)

The recorded vote of each Commissioner taken October 17, 1985 on the question of a closed meeting is as follows:

Acting Chairman Edward W. Ray—Yes
Commissioner Mario F. Aguero—Yes

It is anticipated that, in addition to the Commissioners of the Tribunal, the General Counsel and each of the Commissioners' confidential assistants will attend the Tribunal's deliberations.

Dated: October 17, 1985.

Robert Cassler,

General Counsel.

[FR Doc. 85-25515 Filed 10-22-85; 1:02 pm]

BILLING CODE 1410-09-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:05 a.m. on Monday, October 21, 1985, the Board of Directors of the Federal Deposit Insurance Corporation met in open session, by telephone conference call, to elect L. William Seidman as Chairman of the Board of Directors of the Federal Deposit Insurance Corporation, effective immediately.

In calling the meeting, the Board determined, on motion of Acting Chairman H. Joe Selby (Acting Comptroller of the Currency), seconded by Director Irvine H. Sprague (Appointive), concurred in by Director L. William Seidman (Appointive), that Corporation business required its consideration of the matter on less than seven days' notice to the public and that no earlier notice of the meeting was practicable.

Dated: October 22, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-25541 Filed 10-22-85; 3:10 pm]

BILLING CODE 6714-01-M

4

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 49 FR 42819, October 22, 1985.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: Approximately 1:00 p.m., October 23, 1985.

CHANGE IN THE MEETING: The meeting will now be held on October 29, 1985 at 10:00 a.m.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-25552 Filed 10-22-85; 3:54 am]

BILLING CODE 6717-01-M

5

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 49 FR 42640, October 21, 1985.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: October 23, 1985, 10:00 a.m.

CHANGE IN THE MEETING: The following Docket Numbers and Companies have been added:

Item No., Docket No., and Company

RP-6

Docket No. IS83-29-000, BP Pipelines Inc.
Docket Nos. IS83-27-000, IS84-11-000 and
IS85-8-000, Exxon Pipeline Company

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-25553 Filed 10-22-85; 3:45 pm]

BILLING CODE 6717-01-M

6

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

October 21, 1985.

Change in Previously Announced Agenda

The agenda notice dated October 17, 1985 has been postponed. The following information is updated:

TIME AND DATE: 10:00 a.m., Wednesday, October 30, 1985.

PLACE: Room 600, 1730 K Street, NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Secretary of Labor on behalf of Sedgmer, et al. v. Consolidation Coal Company, Docket No. LAKE 82-105-D. (Issues include whether the administrative law judge erred in dismissing the discrimination complaint).

2. Secretary of Labor on behalf of Richard Truex v. Consolidation Coal Company, Docket No. WEVA 85-151-D. (Consideration of a Petition for Discretionary Review.)

It was determined by a unanimous vote of Commissioners that the changes be made concerning this meeting and that no earlier announcement was possible. 5 U.S.C. 552b(e)(1).

Any person intending to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Thus the Commission may, subject to the limitations of 29 CFR 2706.150(a)(3) and 2706.160(e), ensure access for any handicapped person who gives reasonable advance notice.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653-5629.

Jean Ellen,

Agenda Clerk.

[FR Doc. 85-25554 Filed 10-22-85; 3:54 pm]

BILLING CODE 6735-01-M

7

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of October 21, 28, November 4, and 11, 1985.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of October 21

Monday, October 21

10:00 a.m.

Status of Pending Investigations (Closed—Ex. 1, 3, 5, & 7)

1:30 p.m.

Discussion with EPA, Advisory Committee on Reactor Safeguards, and Staff on EPA Standards for HLW (Public Meeting)

Tuesday, October 22

10:00 a.m.

Discussion of Fitness for Duty (Public Meeting)

2:00 p.m.

Briefing on Status of Safety Goal Evaluation (Public Meeting)

3:30 p.m.

Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

Wednesday, October 23

2:00 p.m.

Briefing by Executive Branch (Closed—Ex. 1)

Thursday, October 24

11:30 a.m.

Affirmation Meeting (Public Meeting) (if needed)

2:00 p.m.

Discussion of Exemption Request—Environmental Qualification (Public Meeting)

Friday, October 25

10:00 a.m.

Year End Program Review (Public Meeting)

Week of October 28—Tentative

Thursday, October 31

10:00 a.m.

Discussion of Exemption Requests—Environmental Qualification (Public Meeting)

11:30 a.m.

Affirmation Meeting (Public Meeting) (if needed)

Week of November 4—Tentative

Monday, November 4

2:00 p.m.

Continuation of 9/4 Discussion of Threat Level and Physical Security (Closed—Ex. 1)

Tuesday, November 5

10:00 a.m.

Discussion/Possible Vote on Full Power Operating License for River Bend (Public Meeting)

2:00 p.m.

Quarterly Source Term Briefing (Public Meeting)

Wednesday, November 6

9:30 a.m.

Briefing on NUMARC Initiatives (Public Meeting)

2:00 p.m.

Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

3:30 p.m.

Affirmation Meeting (Public Meeting) (if needed)

Week of November 11—Tentative

Thursday, November 14

10:00 a.m.

Briefing by Executive Branch (Closed—Ex. 1)

2:00 p.m.

Continuation of 9/11 Discussion of Proposed Station Blackout Rule (Public Meeting)

3:30 p.m.

Affirmation Meeting (Public Meeting) (if needed)

Friday, November 15

10:00 a.m.

Review of Enforcement Policy (Public Meeting)

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634-1498

CONTACT PERSON FOR MORE INFORMATION: Julia Corrado (202) 634-1410.

Julia Corrado,

Office of the Secretary.

October 17, 1985.

[FR Doc. 85-25456, Filed 10-22-85; 9:37 am]

BILLING CODE 7502-21-M

8

SECURITIES AND EXCHANGE COMMISSION Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of October 28, 1985.

Closed meetings will be held on Wednesday, October 30, 1985, at 3:30 p.m. and on Thursday, October 31, 1985, following the 2:30 p.m. open meeting. Open meetings will be held on Thursday, October 31, 1985, at 10:00 a.m. and at 2:30 p.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meetings. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meetings may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10). Commissioner Peters, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting schedule for Wednesday, October 30, 1985, at 3:30 p.m., will be:

- Settlement of administrative proceedings of an enforcement nature.
- Institution of administrative proceedings of an enforcement nature.
- Institution of injunctive actions.

The subject matter of the closed meeting scheduled for Thursday, October 31, 1985, following the 2:30 p.m. open meeting, will be:

- Post oral argument discussion.

The subject matter of the open meeting scheduled for Thursday, October 31, 1985, will be:

Consideration of whether to grant the application filed by IDS Mutual, Inc., et al., IDS/American Express Inc., IDS Life Insurance Company and Shearson Lehman/American Express Inc., et al. ("Applicants"), requesting an order pursuant to section 10(f) of the Investment Company Act of 1940 ("Act") exempting Applicants from the provisions of section 10(f) of the Act and Rule

10f-3 thereunder to the extent necessary to permit, under certain conditions, the investment company Applicants to purchase through affiliated underwriting syndicates an aggregate amount of securities in excess of the percentage limitations in Rule 10f-3(d). For further information, please contact H.R. Hallock, Jr., at (202) 272-3030.

The subject matter of the open meeting scheduled for Thursday, October 31, 1985, at 2:30 p.m., will be:

The Commission will hear oral argument on an appeal by C.E. Carlson, Inc., a registered broker-dealer, and Charles E. Carlson, its president, from an administrative law judge's initial decision. For further information, please contact Daniel J. Savitsky at (202) 272-7400.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: David Powers at (202) 272-2091.

John Wheeler,

Secretary.

October 21, 1985.

[FR Doc. 85-25508 Filed 10-22-85; 12:39 pm]

BILLING CODE 8010-01-M

9

TENNESSEE VALLEY AUTHORITY

[Meeting No. 1358]

TIME AND DATE: 9 a.m. (EDT), Tuesday, October 22, 1985.

PLACE: TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

AGENDA ITEMS:

B—Purchase Award

1. Requisition 11—Term Coal for Cumberland Steam Plant. This recommends award to Island Creek Coal Sales Company for a term ranging from 5 to 20 years. The contract would provide a maximum total of 36,289,440 tons from mines in Union County, Kentucky. The total maximum commitment would be \$1,018,644,580 in Power funds.

CONTACT PERSON FOR MORE

INFORMATION: Craven H. Crowell, Jr., Director of Information, or a member of his staff can respond to requests for information about this meeting. Call 615-632-8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office, 202-245-0101.

SUPPLEMENTARY INFORMATION:

TVA Board Action

The TVA Board of Directors has found, the public interest not requiring otherwise, that TVA business requires that this meeting be called at the time set out above and that no earlier announcement of this meeting was possible.

The members of the TVA Board voted to approve the above findings and their approvals are recorded below:

Approved:

C.H. Dean, Jr.,

Director.

Richard M. Freeman,

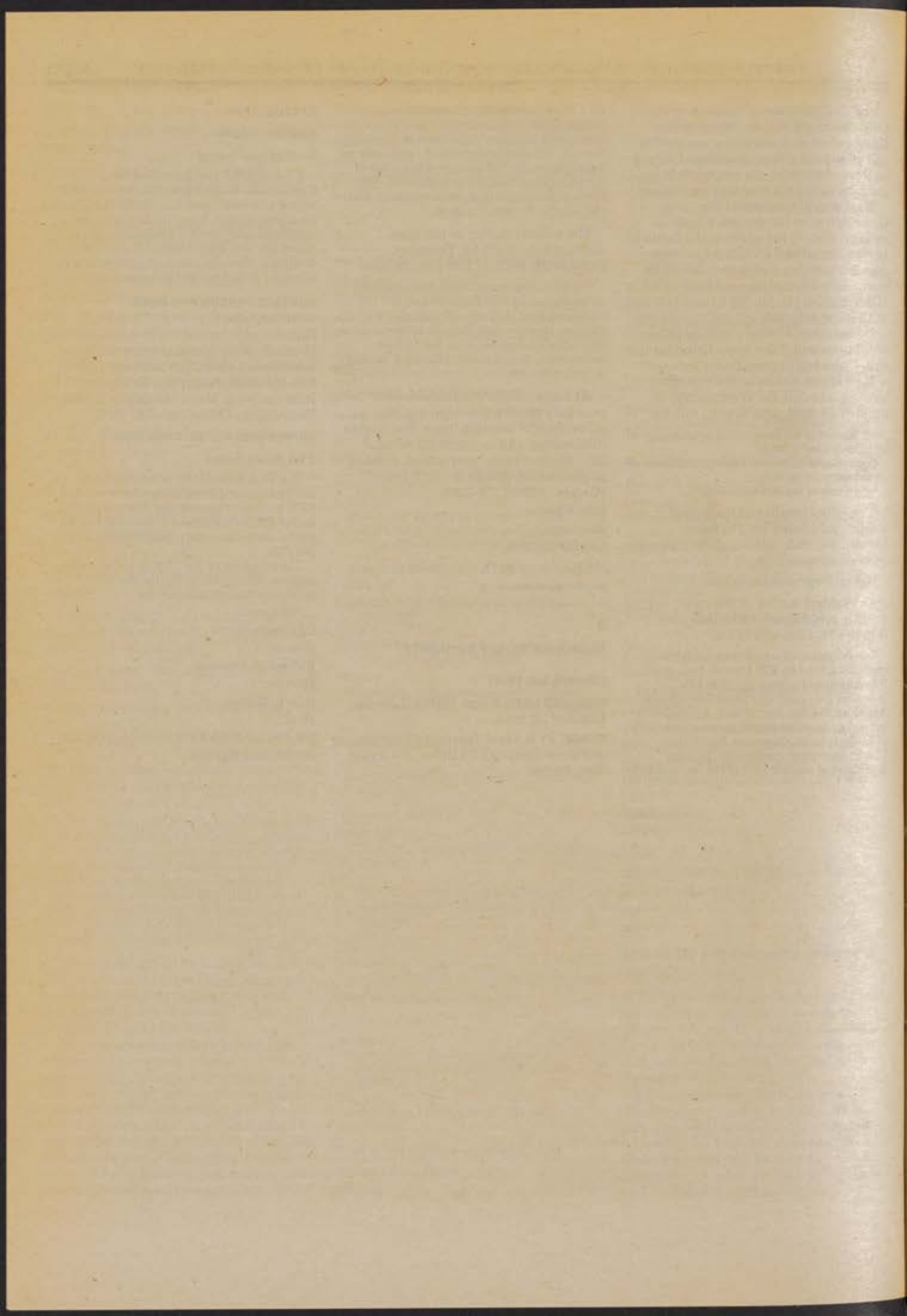
Director.

John B. Waters,

Director.

[FR Doc. 85-25469 Filed 10-22-85; 11:02 am]

BILLING CODE 8120-01-M



Thursday
October 24, 1985

Part II

**Department of
Transportation**

Coast Guard

**46 CFR Parts 10, 15, 35, 157, 175, 185,
186, and 187**

**Licensing of Maritime Personnel;
Supplemental Notices of Proposed
Rulemaking**

DEPARTMENT OF TRANSPORTATION**Coast Guard****46 CFR Parts 10, 15, 35, 157, 175, 185, 186, and 187****[CGD81-059]****Licensing of Maritime Personnel****AGENCY:** Coast Guard, DOT.**ACTION:** Supplemental notice of proposed rulemaking.

SUMMARY: The Coast Guard is changing its original proposal (48 FR 35920) of August 8, 1983, to amend the regulations concerning the licensing of individuals and the registration of staff officers. The proposal would simplify the license structures for ocean and inland service, delete many of the trade restricted licenses and simplify the license procedures by redesigning the format of the regulations and adding easy reference tables. The charts, tables, and flow diagrams included in the proposed regulations contain clear and concise guidelines for someone entering the merchant marine at any level or for the experienced mariner upgrading a license. The present list of licenses (over 100) and examinations (over 80) create a confusing structure in which to plan a career. Special considerations such as inspected versus uninspected vessels, tonnage, routes, vessel's trade, propulsion mode and horsepower limits result in artificial and unnecessary restrictions to advancement for a mariner. The proposed amendments revise the regulations in 46 CFR Part 10 and modify the regulations for licensing personnel on small passenger vessels and relocate them from Part 187 to Part 10. Furthermore, these proposed amendments revise Part 157 to reflect technological developments, the recodification of Title 46 United States Code, and changes in terminology associated with merchant marine personnel. Part 157 is also relocated to Part 15 for convenience.

In addition to the amendments to licensing and manning regulations, many changes have been proposed for Parts 175 and 185 to conform with the terminology, i.e. master and mate versus operator or ocean operator.

DATE: Comments must be received on or before February 21, 1986. Public hearings are planned. The dates and locations will be published in a separate notice as soon as final arrangements have been made.

ADDRESS: Comments should be submitted to the: Executive Secretary, Marine Safety Council (G-CMC/21) [CGD 81-059] U.S. Coast Guard,

Washington D.C. 20593. Between 8:00 A.M. and 4:00 P.M., Monday through Friday, comments may be delivered to and will be available for inspection or copying at the Marine Safety Council (G-CMC/21), Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street, SW. Washington, D.C. 20593, (202) 426-1477. For further information contact: CDR George N. Naccara, Project Manager, Office of Merchant Marine Safety (G-MVP), Phone: (202) 426-2240.

SUPPLEMENTARY INFORMATION:

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments. Comments should include the name and address of the person making them, identify this notice [CGD81-059], give the specific section of the proposal to which the comment applies, and the reasons for the comment. All comments received before expiration of the comment period will be considered before final action is taken on this proposal.

Background

This proposal would implement provisions of Public Law 96-378 and the Port and Tanker Safety Act of 1978. Further, a licensing regime would be put in place that conforms to provisions of the International Convention on Standards of Training, Certification, and Watchkeeping for Seafarers (STCW, 1978). Public Law 96-378 discussed the establishment of suitable career patterns, service and qualifying requirements and substitution of training time and courses of instruction for sea service on deck or in the engine department. The Port and Tanker Safety Act of 1978 required improved pilotage standards, qualification for licenses by the use of simulators, minimum health and physical fitness criteria and periodic retraining and special training for upgrading positions. The STCW Convention entered into force internationally in April 1984. The United States has not yet ratified. Many serious concerns were expressed in the comments to the docket regarding this Convention. The Coast Guard supports the intent of the Convention and, with this Supplemental Notice, hopes to allay the fears of the industry and promote ratification. Public Law 98-89 of August 20, 1983, revised and consolidated certain laws relating to vessels and seamen contained in Title 46, United States Code. These changes also necessitated certain amendments to our licensing regulations. The Coast Guard also plans to revise the licensing

regulations purely from an administrative view.

The Coast Guard published an advance notice of proposed rulemaking (ANPRM) concerning these amendments on October 29, 1981 in 46 FR 53624-53627. 72 written comments were received in response to the ANPRM and were discussed in the original notice of proposed rulemaking. Private individuals, maritime attorneys, commercial enterprises, maritime unions, industry associations, state marine agencies, federal agencies and state and federal maritime schools submitted comments to the docket. The Notice of Proposed Rulemaking was published on August 8, 1983, in 48 FR 35920. 693 comments were received. The Coast Guard has reviewed the proposed rule in light of those comments and is now proposing significant changes.

A key issue in the original notice of proposed rulemaking was the inclusion of the International Convention on the Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW). The Coast Guard attempted to minimize the impact of the convention by harmonizing most of our Coast Guard regulations with the STCW requirements. Our attempt was one of facilitating industry compliance with this convention so that U.S. vessels in foreign trade would not encounter problems in sailing to ports of signatory nations. The overwhelming reaction received in public meetings and in the comments to the docket was strongly against the STCW imposed service requirements and many other more subtle changes to our existing licensing regulations. Therefore, industry clearly indicated that facilitation is not desired for the Convention. Unfortunately, this rejection of STCW was often based on misconceptions or misperceptions of our regulatory intentions. Specifically, reducing the number of license exams in the unlimited category was not STCW mandated, but an internal decision. Another exam has been added in this Notice at the master and chief engineer license levels. The discussion of celestial navigation in deck officer exams came about from numerous suggestions we have heard from licensed officers and training schools rather than any statements or implications from STCW. This Notice contains, in the opinion of the Coast Guard, satisfactory and acceptable solutions to the constraints of the STCW Convention and, importantly, to the concerns and the needs of the U.S. merchant marine. The purposes of the Supplemental Notice are therefore: (1) To provide the public another

opportunity to review and comment on the numerous revisions and improvements to the original notice; and (2) to remove the problems and the reluctance of certain segments of industry concerning the impact of the STCW Convention and allow for U.S. ratification of that Convention.

Discussion of Comments

It was very encouraging to note the quality and constructive criticism in most of the comments. Although some comments were limited to the specific circumstances involving an individual's license and what would happen to that license in the new system, most people addressed general areas of concern in the proposal. Many comments also contained alternative suggestions.

The comments are organized and discussed under specific topics along with the proposed changes. The paragraphs are numbered and the key issue to be discussed is underlined. The supplemental proposal also contains license structure charts for all licenses. Minor changes were necessary to the charts based on the comments; however, the structure charts will still indicate career patterns, license progressions, experience requirements, and references in the proposed regulations which describe each license.

The section of Part 10 (Subpart 10.700) which addresses the licensing of pilots is not included in this Notice. This subject is addressed in a separate regulatory project [CGD 77-084] Licensing Of Pilots—Manning of Vessels.

Specific Comment Areas

1. *Public hearings:* Many comments requested public hearings be held on this proposal. Three public hearings have been scheduled on this supplemental proposal. The Coast Guard has made intensive efforts to bring this proposal to the attention of affected parties. We distributed nearly 10,000 copies of the proposal with two pages of highlights and a cover sheet encouraging public response. We supplied copies of the proposal to maritime unions, trade associations, our Regional Examination Centers, to over 1500 people on a licensing mailing list, and to the general public where interest had been shown. Numerous media sources were also supplied the information for printing in over 3,000 trade journals, newspapers, and magazines, in addition to over 20,000 addresses on the boating safety mailing list. Furthermore, the Coast Guard participated in 19 public meetings and conference calls to explain the proposal. In these public meetings, the requesting

groups were required by the Coast Guard to publicize the meeting. Consequently, labor organizations, business, and the general public have all benefited from the meetings which were open to anyone, not just the requesting group. At these meetings, the Coast Guard explained the intent of the proposal and responded to specific questions concerning the applicability and probable impact of the regulations on individuals with different and varying backgrounds. The success of these informational meetings was reflected in the improvement in quality of the comments received to the docket, resulting in informed opinions rather than comments based on misunderstanding. However, the comments to the docket clearly supported and demanded public hearings; therefore, they are scheduled as previously mentioned.

2. *Supplemental Notice:* Many comments requested a supplemental notice of proposed rulemaking be published. Due to the many modifications to the proposal and the revised and flexible approach to the implementation of the STCW Convention, this supplemental notice is published with another open comment period and public hearings.

3. *STCW provision:* Many comments observed the use of any STCW requirements in our licensing system. It was felt that a convention which is not ratified by the United States should not have any impact on our established licensing system. While it is still true that the Convention has not been ratified by the United States, STCW came into effect internationally in April 1984. The Coast Guard supports the STCW and agrees with its intent and purposes. As previously mentioned, the misperception of the impact of STCW on the licensing proposal of August 1983 resulted in much of the negative comments.

As a result of review and comments, the impact of the proposal is as follows:

- (1) Requirements for firefighting training for licensed officers (although this training requirement has been considered and supported previously);
- (2) Minor changes to license renewal procedures which, in this Notice, are quite similar to present requirements;
- (3) Establishment of the Designated Duty Engineer license a title which satisfies the Convention, meets Coast Guard licensing standards, and causes very little impact on industry;
- (4) 200, 500, 1600, and unlimited tonnage categories; and
- (5) Specific, detailed listing of topics for every license examination including a new topic "Basic Principles to be

Observed in Keeping a Navigational/Engineering Watch".

4. *Retain high standards:* As expressed in the comments, many people felt that the United States licensing regulations were the best in the world, and that many of the proposed changes would weaken the system. Certainly, the Coast Guard agrees that our standards are among the best in the world. It was never our intention to compromise the high standards of our licensing system, nor to lower the qualifications to obtain a U.S. license. Many of the changes in this supplemental notice are as a result of the comments to the docket on particular items which were perceived as weakening our system.

5. *"Significance" of the proposal:* Many comments stated that the proposed licensing changes were not "non-significant" and that they should indeed be significant in any definition of the word as far as their impact on our licensing system. The Coast Guard is aware of and sensitive to the impact of this rule on the lives of licensed officers. We categorized the original proposal as non-significant and of minimal impact only within the definitional context of Executive Order 12291 and Department of Transportation Order 2100.5.

6. *Celestial navigation:* Over 200 commenters felt that the celestial navigation parts of the examination for deck officers should remain as they are presently. In the notice of proposed rulemaking, the Coast Guard attempted to stimulate interest and feedback from the public concerning celestial navigation on the examination. We never considered totally removing celestial navigation from any license exam. The overwhelming response in the comments was to keep celestial navigation in its entirety. A percentage of comments also felt that we should expand the electronic navigation aids and nautical astronomy sections. The Coast Guard agrees and will add questions to the deep sea deck licensing examinations.

7. *License examination structure:* Over 100 commenters felt that the Coast Guard was lowering the standards of our licensing system for the unlimited deep sea licenses by cutting back from 4 license exams to 2. The Coast Guard rationale was that the second and third mate and second and third assistant engineer exams were very similar and another exam at those levels would be redundant. Likewise, the chief mate and master and the first assistant and chief engineer exams were quite similar. We felt that the chief mate and the first assistant engineer should be fully

tested on command levels due to the fact that they should be capable of assuming command responsibilities. Based on the comments received, the Coast Guard will add another level of examination at the master and chief engineer levels. Rather than being the conventional full examination, the tests for master and chief engineer will be of less duration (four sections, two full days of testing) with emphasis again on certain command topics. The examination topics are listed in subpart 10.900.

8. Professional requirements for license renewal: Many comments felt that the proposed open book renewal exercise for deck and engineer licenses would not serve any useful purpose. The exercise could be administered through the mail which many people felt would certainly lead to compromise. The intent of the open book renewal exercise would be to maintain a working familiarity with the skills necessary to work within the industry. We realize, however, that alternatives should be available for those actively sailing on their license or involved in the industry. Therefore, the Coast Guard is proposing alternative requirements for renewal. One would be the renewal exercise for deck and engineer licenses requiring a 90 percent passing grade. The examination would consist of 50 questions. A second alternative would be evidence of one year sea service in the past five years. This evidence may be discharges or letters showing service as a deck or engineer officer. Another alternative would be a Coast Guard approved refresher course. The fourth method of renewal would accept employment in a shoreside position closely related to the operation of vessels for at least three years during the past five years. The renewal of a deck license in this manner would also entail a Rules of the Road exercise, similar to that which is presently required.

9. Open-book renewal exercise: Many comments suggested limiting the open-book renewal exercise to rules of the road and pollution prevention questions only. The Coast Guard partially agrees but will also include other questions on safety aspects of the deck and engineer licenses. We prefer to keep the renewal exercise as one of the alternatives for the renewal of license to at least re-familiarize mariners with their duties. As mentioned before, another alternative is a Coast Guard approved refresher training course which can be substituted for the renewal exercise or the sea service requirement for renewal.

10. Physical examination required at license renewal and raise of grade: In the recodification of Title 46 of the U.S. Code, it was the intent of Congress to ensure the physical fitness of a licensed individual. Specifically, 46 U.S.C. 7101(c), by mentioning the critical qualifications, implies that this includes license renewal and raises of grade also. There was also support in the comments to the docket to include additional physical examination requirements for renewal of all licenses. As most license renewals are presently conducted through the mail, and those applications must be accompanied by a certification by a licensed physician, the impact should be minimal. Furthermore, an applicant for a raise of grade of license who has not had an original or renewal physical examination during the past three years must also obtain this statement from a licensed physician. The Coast Guard envisions the future use of the "Guidelines for Physical Examination for Retention of Seafarers in the U.S. Merchant Marine" as proposed by the Seafarers Health Improvement Program (SHIP). SHIP is composed of members from all areas of the maritime community. In the future a licensed physician may refer to these guidelines in certifying the physical fitness of an applicant for renewal or raise of grade.

11. Renewal by mail: Comments received on the renewal by mail topic were very mixed; some people oppose renewal by mail procedures in any case. Many people felt that we were weakening the system or allowing possible compromises by allowing renewal by mail. Many commenters felt we would not see the person, and we could not ensure physical competence or even that the person was still alive in order to renew the license. Other people were in favor of the renewal by mail procedures as have existed since the Regional Examination Center concept went into effect in 1982. Existing regulations also allowed for renewal by mail in extraordinary circumstances even prior to that time. The Coast Guard feels that renewal by mail should be allowed and will continue that policy. We will, however, require a statement by a licensed physician attesting to the fact that the applicant for renewal of a license can satisfactorily perform the duties associated with that license.

12. Color vision test for renewal of licenses: Based on the opinion of various ophthalmologists and the very rare occurrence of a color deficiency developing or worsening in an applicant, the Coast Guard has decided in this proposal to delete the requirement for

deck and engineer officers to pass a color sense test for renewal of a license. It is our opinion that the color sense test is rarely a significant factor in renewals. In a related comment received to the docket, a question was asked concerning applicants who had passed a Williams Lantern test to satisfy original licensing requirements for color sense. As the Coast Guard has deleted the requirement for color sense testing on renewal, this question is moot.

13. Requirement for pilot license renewal: The original notice proposed an additional requirement for renewal of a pilot license—an affidavit attesting to any involvement in reportable marine casualties since the issuance of the current license. 11 comments were received which opposed this requirement for various, well-articulated concerns. The Coast Guard is still examining this specific proposal and has included the same statement in this notice.

14. Oral or oral assisted examination: The Coast Guard had proposed oral or oral assisted examinations for all levels of licenses. Over 100 comments opposed any type of oral examination for any licenses. Some comments suggested oral examinations *only* for very limited licenses, such as those of 500 gross tons or less. The Coast Guard agrees with those comments and, as in present policy, will allow oral exams for these limited licenses only. The applicants must present the required service and qualifications and recommendations from their employer(s). The requirement to first attempt the written exam will not be continued; however, the applicant must demonstrate difficulty in understanding and answering written questions. The license will be issued with tonnage, trade, and route limitations. In order to remove the limitations, the required written exam must be satisfactorily completed.

15. Dividing line for inland and near coastal licenses: Many comments suggested the use of the COLREGS line as an appropriate line of delineation between inland and near coastal licenses. This line would permit a logical separation of examination material between those applicants for inland licenses and those applicants whose licenses would require the international rules; therefore, the Coast Guard is adopting the COLREGS lines for licensing limits. Although there are certain parts of the country which would face a problem in using these COLREGS lines, such as Puget Sound and the New England coast, exceptions will be noted in the text to solve those situations. Furthermore, the limits of authority for

the radar observer endorsement would be consistent with the COLREGS delineation for specific waters.

16. Routes for uninspected towing vessel licenses: Many comments suggested retaining the ocean route for the uninspected towing vessel license. The "operator" license, unfortunately, is not an accepted title in the STCW Convention when sailing internationally. Solutions contained in this Notice will greatly simplify the progression and even encourage the towboat operator to obtain the limited master's license. With an additional 6 months of offshore service, certain training requirements, and by making up any exam deficiencies (which will be minimal) the operator may obtain a master 500 gross ton license upon oceans.

17. First aid and CPR requirements: Over 40 comments requested that the Coast Guard retain the requirements for first aid and CPR training and certification for licensing. Our present regulations require this training and the presentation of the cards or certificates for original licenses only. Based on the comments received, we are retaining this requirement for original licenses in this Notice. We do not intend to require recertification for this type of training in our license regulations for renewal. These requirements were not extended to licenses of 200 gross tons or less, although some comments supported that. Comments are requested concerning the need for first aid/CPR training on vessels of 200 gross tons or less in inland or offshore service.

18. Firefighting training: Many comments were in favor of the firefighting training requirement for licenses. In fact, some of the comments were in favor of training for inland as well as offshore licenses. However, the Coast Guard continues to propose firefighting training for deck officers on all vessels over 200 gross tons only in ocean or near coastal service or engineer officers on vessels of over 1,000 horsepower in only ocean or near coastal service. We have not extended the requirement to inland service nor for vessels of up to 200 gross tons or 1,000 HP; however, your comments are requested concerning this possibility.

Some comments were concerned that we may require a type of training, firefighting for example, when the training facilities are not readily available to the public. The Coast Guard has thus far granted interim approval to ten firefighting training institutions offering both classroom and field experience. We know of other institutions which either have partial approvals or are planning for Coast Guard approval for firefighting training.

In any case, when the final rules are to go into effect we would evaluate the available firefighting training considering the number of licensed people who would be affected by that decision. The Coast Guard will require that officers complete the basic and advanced firefighting courses (either combined or separately) and that unlicensed personnel must have attended a basic firefighting course. The IMO resolution which discusses firefighting training makes a distinction on the topics and curricula taught for each of those levels of training. We also do not envision a requirement for firefighting renewal training. We prefer the one time training prior to original license issuance with vigorous follow-up by shipboard drills and instructions.

19. License transition for operators and ocean operators: Many comments suggested that the Coast Guard allow operators and ocean operators to automatically convert their licenses to the master 200 gross ton license in the new system. Some comments suggested a 3-5 year additional service requirement. The Coast Guard feels that may be excessive for a service requirement but does feel that the concept is worthwhile and will enhance career opportunities for the individual. In this proposal, we will allow license holders who have accumulated at least 3 years total service on vessels of over 50 gross tons to convert to a master 200 gross ton license upon near coastal waters in the new system. Furthermore, if the applicant has sufficient service on vessels of 50 gross tons or over and completes certain training requirements (firefighting, radar observer, lifeboatman and able seaman requirements), the license may be extended to an ocean route. An additional exam must be completed for celestial navigation. The applicant also has the option of increasing the scope of the license to 500 gross tons by completing that particular master license examination.

20. Training as substitution of service: There were many mixed comments concerning the Coast Guard acceptance of shore-based experience or simulator training for licenses. Many comments opposed the substitution of shore-based training or simulator training because people felt that only sea service is the desired qualification for license and that nothing can substitute for underway service. The Coast Guard proposal accepts shore experience, training, or simulator training only as a partial substitution for required underway service. The ratio of substituted service will vary according to the quality, length, and level of sophistication of the course. Simulator training specifically

must be part of a Coast Guard approved training course. The Coast Guard approval procedure requires initial and periodic review of the training course, evaluation of the facility, instructors, and curriculum and will also provide a measure of control for the graduates of that training course. In no case will simulator training itself be purely accepted in lieu of underway service. It must be part of the approved training course and will be evaluated in that regard. The Coast Guard does feel that simulator training and other shore based training are very valuable methods of preparing a mariner for a job assignment and are certainly effective in retraining a mariner.

21. Requirement for mate 200 gross tons: Over 50 comments requested a discussion of the requirements for the mate position aboard vessels from 0 to 200 gross tons. In the proposal of August 1983, it had been discussed in regards to licensing and manning sections. From the comments, it was obvious that people interpreted our discussion to imply a requirement for an additional person on many small passenger vessels. This is not the Coast Guard's intent and we have clarified that position in this proposal. Our current policy of requiring the additional operator (mate) on vessels on a voyage over 12 hours in length will continue and is clearly stated in the licensing and manning sections of this proposal.

22. Additional credit for 12 hour workdays: Many comments were received on this item, some supporting and some opposing this policy. The Coast Guard feels that personnel who are serving on vessels authorized a two-watch system should be given credit for that additional watchstanding service. It has been our long standing policy to allow time-and-a-half credit for 12 hour days where the time has been spent in a 6-on and 6-off watch system. The additional credit would not be allowed for personnel standing overtime or additional day work duties. Furthermore, the OCMI will evaluate service with evidence of 12 hour workdays.

23. Credit for instructor time and shore experience: The discussion in the original proposal on this topic formalized Coast Guard policies which have been in effect for many years. Over 25 comments were received on this topic and they were divided equally for and against substitution of service for this type of experience. In this proposal, the Coast Guard will keep this policy in effect. There are maximum amounts of time acceptable by substitution of instructor time and shore experience in

a related industry. This credit will be allowed for original licenses and raises of grade. Furthermore, in a related topic, many comments requested credit for port captain time similar to that proposed for port engineer experience. The Coast Guard agrees with that comment and will accept a certain amount of time as port captain as a substitution for underway sea service.

24. Tonnage Convention: Ten comments requested a discussion on the 1968 Tonnage Convention impact on the licensing regulations. In the Notice of August 1983, we briefly mentioned that the effect of the tonnage convention would probably result in higher vessel gross tonnages from measurement under the Convention. We assumed that the proposed tonnage categories will resolve most problems in that the primary vessels affected will remain in 200-1600 gross tons category. When and if the Tonnage Convention, the implementing legislation and regulations come into effect, we will make every attempt to allow the seaman to continue to operate on those vessels presently employed. That may require specific tonnage endorsements on each individual license or it may require conversion to licenses in the new system. In either case, the seaman will not be penalized by the effects of differing tonnage as calculated under the international tonnage convention system, the standard register tonnage system, or the new regulatory tonnage.

25. Creditable time in other departments: Of the 14 comments received discussing this topic, most opposed the crediting of time in other departments. For example, an amount of engineering service credit may be accepted towards a deck license or vice versa. The Coast Guard feels there is some merit in accepting some time in the other department towards licenses. It is to the advantage of the seaman and the vessel operator to have a licensee at least basically familiar with all vessel operations. This also promotes cross training of individuals when entering the merchant marine. A person who may be undecided as to where his/her interests lie would not be penalized by missing the credit for that cross training. The Coast Guard will continue to accept a minimum of time towards deck and engineer licenses for this type of experience.

26. Military service credit: Although most comments opposed the crediting of military sea experience for conventional merchant marine sea service, the Coast Guard feels that a percentage of military sea time is equivalent and creditable for sea service toward a merchant marine

license. This has been Coast Guard policy for many years and we elect to continue this policy.

27. Mobile offshore unit regulations: All comments received to the docket concerning mobile offshore unit regulations favored a separate section and a separate supplemental notice for this particular topic. The Coast Guard agrees and will prepare a separate rulemaking for the licensing of personnel on mobile offshore drilling units. The manning requirements and any training and qualification specifics will also be addressed in this separate rulemaking. It is our intent to publish those proposed rules with this notice.

28. Methods of publicity for the notice: Many comments were concerned with the methods the Coast Guard used to publicize the notice of proposed rulemaking. Many people alleged that our methods were inefficient and did not allow license holders sufficient time to properly analyze the proposal. In fact, many comments suggested mailing copies of the proposal to all license holders in our files. The Coast Guard considered this approach but since there are over 1,300,000 licensed personnel in Headquarter's files, this is not economically feasible. The Coast Guard distributed nearly 10,000 copies of the proposal with two pages of highlights and a cover sheet encouraging public response. We supplied copies of the proposal to maritime unions, associations, our Regional Examination Centers, to over 1500 people on a licensing mailing list, and to the general public where interest had been shown. Numerous media sources were also supplied the information for printing in trade journals, newspapers, magazines, etc. Furthermore, the Coast Guard participated in 19 public meetings and conference calls sponsored by various industry associations. Unlike public hearings which require advance notice in the Federal Register, the project manager had been able to travel to every area of the country on short notice to address virtually any group which requested information. The Coast Guard selected public meetings rather than public hearings because, based on comments received to the docket for the advance notice and initial response to the notice, we felt that clarification and presentation of information were necessary for the public to understand this massive proposal. At these public meetings, the project manager has been responsive to specific questions concerning the overall applicability and probable impact of the regulations on individuals with different and varying backgrounds. An accurate reflection of

this success was the improvement in quality of the comments submitted to the docket. Numbering 693 comments, the obvious level of knowledge about the proposal which resulted from this method of public information allowed people to express an informed opinion rather than a comment based on a misunderstanding. The Coast Guard also extended the public comment period from the original December 1983 closing date through March 1984 to further allow the public more time to evaluate the proposal. This supplemental proposal will be distributed to our mailing list and to all of the media sources available. It is our intention to involve the public as much as possible in this rulemaking and we will make every attempt to make the information available to all affected personnel.

29. Great Lakes licenses: Many comments suggested that the present Great Lakes licensing and pilotage system should be retained. The Notice of August 1983 proposed moving the Great Lakes licenses into the near coastal category, limiting the pilot licenses to harbors and rivers, and that the open waters of the Great Lakes would be nonpilotage waters. The Coast Guard also proposed a four rank structure for Great Lakes licenses within the near coastal category. All comments received on this topic have rejected this proposal; therefore, the Coast Guard is revising the proposal in that regard. In this proposal, licenses for master Great Lakes, mate Great Lakes and first class pilot are retained. This structure is basically similar to the present licensing system and will allow industry the flexibility which they felt necessary for their unique area. The title of the deck license is expanded to "Great Lakes and inland waters" for all tonnage categories. The master on inland waters license will still remain; however, that license will not include the Great Lakes in the unlimited tonnage category. The Great Lakes and inland waters are included in the 1600 gross ton and 200 gross ton license categories. Cross-overs are being proposed from the Great Lakes to offshore licenses (near coastal) and vice versa. For the 200 gross ton category on inland waters which will include the Great Lakes, the proposal will allow the small passenger vessel operator converting to the masters license to obtain a license in one year as is presently the case.

30. General concurrence with proposal: Because so many of the comments indicated general concurrence with the overall intent of the rulemaking, the simplification of the

regulations, the streamlining of the regulations, the career patterns, the cross-overs, the removal of many government road blocks to career progression in the industry, the Coast Guard has decided to go forward with this rulemaking. The need for the supplemental notice is undeniable. There are numerous changes not only in content but also in philosophy. The numerous changes to the proposal that have come about as a result of the comments will restore much of the present licensing system's basic characteristics with the simplification and streamlining still intact.

31. *License reexamination cycle:* The twenty-two comments received on this topic were split evenly, opposing or supporting the new reexamination cycle. The Coast Guard intends to continue that cycle as proposed previously. In fact this reexamination system has been utilized at our Regional Examination Centers for over one year with much success. Certain modifications may be necessary to the time delays between failures; however, we must retain flexibility in the system. The Coast Guard does not intend to return to the old reexamination system that had been in place. We are convinced that system is not effective nor is it economically efficient for the mariner. Furthermore, we do not feel that the new proposed reexamination cycle compromises the examination purpose.

32. *Creditable service on integrated tug-barge units:* The initial proposal, which just restated Coast Guard policy in the regulations, denied the master or tow boat operator on a dual mode integrated tug-barge any tonnage credit except for that of the towboat. The master on the integrated tug barge push only mode would get full credit for the tonnage of the barge and the tug boat. Although many commenters supported full credit for all experience on integrated tug barges on either the dual or the push mode units, the Coast Guard does not agree with that opinion. Other considerations are the typical watchstanding on the bridge of that vessel in the dual mode ITB, the construction of the vessel, the firefighting and lifesaving equipment on that vessel, and the type of license required on that vessel, which would not be a master or mate. These factors compel the Coast Guard to deny the acceptance of that service with full combined tonnage of the tug and barge.

33. *License examinations at cross-overs:* Many comments supported the requirement for a full license examination at any cross-over from one tonnage category to another or from one

route to another. The Coast Guard agrees with that suggestion and will require full examinations at all cross-overs for deck and engineer licenses that increase the scope of the license. In the case of a cross-over from a license with higher tonnage limits or broader routes, moving from left to right on the license structure figures, a partial examination would be required. As an example, a second mate unlimited who attempts to obtain the master 1600 gross ton license would be required to complete a partial examination in those topics not included in the third (or second) mate (entry level) examination. The master 1600 gross ton crossing over to the unlimited category at the second mate level would be required to take a complete third mate examination. The same situation exists in the case of the designated duty engineer crossing over to the second or third assistant engineer unlimited.

34. *License application evaluation:* Many comments felt the evaluation of all license applications whether for physical evaluation, foreign service evaluation or military service should remain at Headquarters. The argument made by the comments was that people would shop around for the most advantageous evaluation in each Regional Examination Center. The Coast Guard partially agrees with that suggestion. We intend to continue publishing more specific guidelines to increase the efficiency of local evaluations in all respects. However, the final evaluation for military service and physical waivers will remain a responsibility of MVP in Headquarters. Other new policies contained in the original proposal have been retained. They will speed up the licensing process for entry into the merchant marine at various license levels including radio officer, staff officer, and many other licenses.

35. *Service requirements for crossing over to higher tonnage licenses:* Comments suggested that the Coast Guard should not require a person crossing over from one tonnage category to a higher tonnage category to revert to an unlicensed position in order to obtain the proper tonnage service necessary for that license. As an example, from the 200 gross ton category to the 1600 gross ton category, we had proposed that at least 50% of your service must be obtained on vessels over 200 gross tons. This would require a master 200 gross tons to revert to an unlicensed position on the larger vessels in order to obtain the required service. The Coast Guard agrees with the comments and will allow direct cross-overs from the 1600

gross ton category to the unlimited category without meeting specified tonnage service. The person advancing from the entry level must still have service on specified tonnage vessels. Major modifications to the license progression offshore from 200 to 500 to 1,600 gross tons have also simplified and enhanced this career pattern. The Coast Guard feels this is a valid progression due to the fact that the person advancing from one tonnage category to another has obtained quality experience as a limited master or engineer in charge. Although it may have been on a smaller tonnage or horsepower vessel, it is still command and watchstanding experience with higher levels of responsibility.

36. *Service required for unlimited licenses:* Comments were received which suggested a requirement for all service necessary for unlimited licenses to be obtained on vessels over 1600 gross tons. In present regulations the implicit requirement for service on vessels of over 1000 gross tons is present for all unlimited licenses. The Coast Guard prefers to allow an amount of service on vessels of under 1600 gross tons. This will promote a career progression and transition to the unlimited license scheme. We will not consider anything more than 50% of the service required for original or raise in grade to be obtained on vessels of less than 1600 gross tons, however. This problem was discussed in detail in letters from the Military Sealift Command where there were a number of vessels between 1000 and 1600 gross tons. It was felt by MSC that the requirement to obtain at least 50% of your service over 1600 gross tons would inhibit those officers from serving in the MSC. Previously, the Coast Guard had required all service on vessels over 1000 gross tons for unlimited licenses. Service on those MSC vessels between 500 and 1000 gross tons was not accepted as creditable service. In this proposal, the Coast Guard will allow that time to count towards unlimited licenses. Therefore, in one respect we are helping many of the seamen on those vessels. For the seafarers on the vessels between 1000 and 1600 gross tons, they will have to rotate from that size vessel to the over 1600 gross ton size in order to obtain sufficient experience for a raise in grade.

37. *Offshore supply vessel and mineral and oil industry license holders:* Many comments felt that the identity of those who obtained the offshore supply vessel and the mineral and oil industry licenses by virtue of the open-book exercise through the temporary licensing

program should be maintained. The Coast Guard agrees with those comments. Those personnel who initially obtained the OSV licenses, met the full service requirement, and took the full examinations to obtain the mineral and oil industry license with the 300 or 500 ton limitation will automatically convert to the 500 to 1600 ton license in the new system. Those who did not take the full exam through the temporary licensing program will retain this OSV limitations on their license.

38. *License progression from master 200 gross tons to master 500 gross tons:* Many comments supported the career progression which exists in present regulations but was not included in the proposal. This progression allowed an ocean operator with an amount of service to progress to the mineral and oil industry master license with a 500 gross ton limitation. In effect this path led from a very limited master to a higher tonnage master's license. The Coast Guard agrees with this suggestion. This proposal allows a master 200 gross tons with at least one year of service on vessels of over 50 gross tons to be eligible to sit for examination for a master 500 gross ton license. The applicant would be required to meet certain training requirements at this level of license including: firefighting training, radar observer endorsement, lifeboatman and able seaman qualifications. After obtaining the master 500 ton license and an additional one year service as master or mate in that tonnage category under the authority of that license, the 500 gross ton limitation will be extended to 1600 tons. The normal career progression will still be available from the master 200 gross tons to mate 500 gross tons and mate 1600 gross tons. An additional year's service as a mate 1600 gross tons will allow the progression to master 1600 as had been included in the prior proposal. This will allow the career path which has been utilized most often in the mineral and oil industry on vessels of less than 500 gross tons.

39. *Authority of Officer in Charge Marine Inspection (OCMI):* Many comments directly and indirectly asked about the authority of the OCMI within his zone. The primary concern involved the limits placed on licenses with appropriate reductions in service and examination requirements. In the past, there have been many unique operations in various zones throughout the country, on the rivers, in certain inland ports and also offshore and coastal operations which warranted special consideration. This authority would continue in the

new regulations as the OCMI will still retain that ability to limit a license and the examination as appropriate.

40. *Radar observer endorsement for 200 gross ton licenses:* Some comments suggested prescribing minimum navigational equipment and radar operator skill development for vessels under 300 gross tons. These comments confused the changes to the inland radar observer endorsement training requirement with a weakening of the overall capability of that qualified person. It was not our intent to lessen the qualification standards but rather to emphasize those aspects of a bridge watchstander in inland waters appropriate to the task. Inland service does not normally entail rapid radar plotting, therefore the decrease in emphasis on that aspect. The Coast Guard previously stated that a requirement for the radar observer endorsement on small passenger vessel licenses in near coastal or inland waters was unnecessary. The equipment is not required on board those vessels and therefore the training cannot be justified. A person holding any license has the opportunity to obtain that training and still have his license endorsed as radar observer even if the requirement for such an endorsement does not exist. The Coast Guard encourages personnel serving on vessels where radar is installed, but not required, to obtain the additional training. With the additional route of "oceans" for the master/mate 200 gross ton license, as stated previously, the applicant must also obtain a radar observer endorsement among other training requirements. It is expected that all vessels operating on those offshore routes will have radar installed and the additional training for the master/mate is justified.

41. *Cross-over charts:* Various comments asked that additional licenses be added to the transition charts and the cross-over charts in the proposal. Those licenses overlooked previously will be added to the transition chart. Additional licenses which have been defined in this proposal will be added to the cross-over charts for career patterns. The tonnage requirements for cross-overs are specified in the appropriate regulations and the cross-over charts will reference specific requirements as appropriate. As explained before, any cross-over which would increase the scope of a license by virtue of the route or tonnage limitation, or trade limitation, would require a complete examination. Cross-overs would require partial examination in most cases. One comment included an excellent chart which compared all

examination topics and listed those requirements for cross-overs. The examination topics can be determined from this chart which will be kept on file at all of our Regional Examination Centers. Due to the size and detail of this chart, it is impractical to publish this in the Federal Register.

42. *Age requirements for licenses:* Many comments were received concerning the age requirements for licenses. The Coast Guard intends to include all age requirements within Subpart 10.200, "General Requirements" for all licenses. The age requirements will remain essentially the same with the exception of the master near coastal 200 gross ton license. This person must be 21 years old due to the fact that there is a pilotage requirement for that licensee on all inspected vessels and the statutory requirement for pilots is a minimum of 21 years of age.

43. *Engineer license titles:* Some comments were received concerning the license titles for engineers as a possible source of conflict with the STCW Convention. In this proposal, we are introducing a new license title, the "designated duty engineer". The license will require three years of service similar to that required for the mineral and oil industry engineer license at present. The designated duty engineer officer may serve on vessels of up to 1600 gross tons upon oceans and any gross tons in inland waters (other than the Great Lakes) with an unattended or periodically unmanned engine room, and may be the only engineer on the vessel. Regarding the requirements of the Officers' Competency Certificates Convention, this license will be equated to the "chief engineer"; however, this also satisfies STCW regulations without the additional service requirement of the conventional engineers licenses.

44. *Limited uninspected towing vessel operator licenses:* Comments were received which suggested modifications on uninspected towing vessel operator licenses for limited operations. For very restricted service, these comments suggested an 18 month and possibly a 6 month operator. The Coast Guard envisions these restricted licenses to be used in limited inland waters, possibly within a geographical limitation from a dock or base of operations. In agreeing with these concepts, the Coast Guard has added restricted operator licenses for 6 months service which includes a modified examination appropriate for that service.

45. *Conversion of master/mate licenses for uninspected vessels of any gross tons:* Comments were received on this item advocating a stricter tonnage

limit when converting a master or mate license on uninspected vessels with an unlimited tonnage to the new system. The Coast Guard agrees with these suggestions. In our proposal of August 1983, the alternative was to assign a 5000 gross ton limitation to the license. In retrospect, that tonnage is excessive for this type license in most cases. Based on the comments received, the Coast Guard proposes in this notice to convert the master or mate uninspected vessel of any gross tons to a master or mate of vessels of 1600 gross tons upon ocean waters. If a person presently holding an uninspected license is serving on a vessel of higher tonnage, or plans to serve in the near future on an uninspected vessel of higher tonnage, and can show evidence of such, the local OCMI may evaluate the case and assign a higher tonnage limitation to the license. In any case, the tonnage on this license cannot be raised to unlimited without progressing through the unlimited tonnage category and taking those required examinations. This conversion aligns more closely with the service requirements as they have been. Current requirements are four years total service to obtain a license as master on uninspected vessels and the proposal will require four years service for the license as master 1600 gross tons.

48. Citizenship requirement for licenses: Comments were received suggesting that non-citizens should be able to obtain licenses. Title 46, U.S. Code 7102 requires that licenses (and certificates of registry) be issued only to citizens of the United States for service on documented vessels. An exception to this rule would be the license as operator of uninspected passenger vessels (ex. MBO) which will be issued with a limitation on its face to undocumented vessels.

47. Transition to new licensing system: Comments were received which asked that the Coast Guard simplify transition to the new system. It was not the Coast Guard's intention to make it difficult for seamen to obtain licenses in the new system or to convert their old licenses to new ones. We had to place some constraints on the cross-over due to the numbers of people attempting to obtain new licenses. Some suggestions proposed that the Coast Guard allow all people with last names beginning with certain letters to obtain their license in some type of orderly sequence. We felt this was not practical and would be very difficult to administer. We plan to continue the policy which was proposed initially. That policy required a person to convert to the new system upon renewal of license. In addition, if a job

opportunity required the new type of license, the applicant could obtain it at any time after the effective date of the regulations.

48. Recency requirements for military personnel obtaining a merchant marine license: Comments on this topic were mixed in support and in opposition to the waiver of a recency requirement for military personnel. In fact, in many comments the acceptance of military service at all was questioned. As we had proposed initially, the recency of service requirement will be established for all licenses as three months experience within the last 36 months. This requirement will also apply to military personnel. The nature of military service does not justify a waiver of this requirement and the necessity to show recent service is an integral requirement of the license qualifications. We will, however, extend a grace period for one year after the effective date of the regulations to allow military personnel time to obtain their original licenses under this new policy.

49. Examination topics: Many excellent comments were received concerning license examination topics. Some comments were quite specific and made additions and deletions to our proposed list of examination topics. Other comments were more general and suggested either returning to our existing examination topics, or deletion of any STCW instigated topics, or requested more specific information on reference material and sources for the examination questions. Specific examination topic suggestions were received for uninspected towing vessels licenses, for the master and mate 1600 gross ton license category, and for the mobile offshore unit licenses (which will be included in a separate supplemental notice). Although many of the names or titles of the examination topics have been changed and in some cases the module titles may change slightly, the Coast Guard does not envision any substantive changes to the present examinations. The length and depth of the exams will remain as they presently exist. In this proposal we are also specifying those exam topics which are required for command levels in certain cross-over situations. The Coast Guard is adding examinations at the master and chief engineer level for unlimited licenses also. The specific topics for those examinations are included in this proposal. The Coast Guard encourages further discussion and comment on topics which should be added, emphasized, or deleted from our suggested list.

50. Transition from limited licenses to unlimited categories: Comments suggested that a license cross-over from any limited license category to the unlimited licenses should be at the third mate or the third assistant engineer level. The Coast Guard does not agree with that suggestion. The experience gained in a responsible capacity on limited size vessels or on inland waters can be equated to service in the unlimited category on ocean waters to a great extent. The total service requirement from the limited categories will in all cases meet or exceed that required for the unlimited licenses. The Coast Guard also feels that credit should be given to a person standing a watch as a mate or assigned the responsibility as an assistant engineer or a watchstanding engineer, or a limited master or chief engineer. These positions can equate with some degree of similarity to service as a third mate or third assistant engineer in the unlimited categories.

51. Boating safety courses accepted in lieu of service for limited licenses:

Comments were received which suggested that the Coast Guard review and evaluate courses which are proposed to be accepted in lieu of a minimum amount of service toward a very limited license in the 200 gross ton category. The Coast Guard will continue to evaluate courses in this regard. It is not our intent to "approve" these courses but we will evaluate and accept them in lieu of a portion of the required service.

52. Visual acuity requirements: There were some lengthy comments received concerning the proposed regulations for corrective lenses and the requirements to carry spare lenses on board a vessel while serving under the authority of a license. Nothing has changed from present policy in granting waivers or in regard to the responsibility of the license holder. We do not feel the liability has been placed upon the master in this situation where the license holder may be required to carry the spare lenses aboard. This has been our policy in recent years and will continue in the future. The only change resulting from this proposal would be that local offices could grant waivers up to a visual acuity of 20/200. Headquarters evaluation would be required for vision which was worse than 20/200. We have also stated in the regulations that uncorrected vision of worse than 20/400 would not normally receive a waiver.

53. Signaling (flashing light) requirements for licenses: Many comments requested further discussion

of the proposed requirements for signaling for licensed officers. The proposal requires testing on flashing light for service on vessels of over 150 gross tons. While the Coast Guard is still considering a lower rate of testing (possibly 4 words per minute versus 6 words per minute) for vessels under 1600 gross tons, we intend to keep this requirement in place. Regulations contained in 46 CFR 111.75-18 require the signal light to be installed or aboard on all self-propelled vessels of over 150 gross tons on international voyages. The Coast Guard opinion is that if the gear is required on board the vessels, the deck officers should be trained in its operation. Certainly as a national security measure in wartime, U.S. flag vessels must have the capability of identifying themselves by flashing light when entering harbors and ports around the coasts of the United States. This requirement for testing will only be included in the ocean license categories with service authorized on vessels above 150 gross tons.

54. *Character references:* Some comments suggested making the requirement for character references more difficult for original licenses. The Coast Guard will require a written recommendation from a master and two other licensed officers. For license as engineer or pilot, at least one of the recommendations must be from the chief engineer or licensed pilot, respectively, of a vessel on which the applicant has served. For small boat experience where service may not have been gained in the presence of another licensed individual, the Coast Guard requires the written recommendation of a marina operator or other vessel operator who has observed the applicant at some time during his/her service. For the individual who has obtained service only on small boats with family members or friends as witnesses, these people would have to provide written recommendations taking into account the applicant's experience and performance.

55. *Character check for uninspected towing vessel operators:* Comments were received from members of the towing industry which requested an alternative to the proposed references and recommendation needed for original license. Certain situations in that industry and also in the small passenger vessel industry would make the proposed requirements very difficult to comply with. The comments suggested retaining a provision under the existing towboat operator licensing requirements. The Coast Guard agrees with this suggestion and will add the alternative suggested in the existing

§ 10.16-21(d). This will allow the written recommendations of recent marine employers if at least one such endorsement is from the master, operator, or person in charge of a vessel on which the applicant has been employed.

56. *Tankermen qualifications for masters and mates:* By virtue of converting the operators and ocean operators of small passengers vessels to master and mate licenses, it can be implied that these people will also have a tankerman qualification. That is not the Coast Guard's intent. We have provided an exclusion for licensed deck officers on vessels of 200 gross tons and under from any automatic tankerman qualification.

57. *Service time required for mate 200 gross ton license:* Many comments suggested lowering the service time required for original license as mate 200 gross tons. The original proposal suggested 18 months service for the near coastal mate and 6 months for the inland mate. Other suggestions supported further lowering of the service requirements to 3-6 months. The Coast Guard feels that this mate can serve as an officer-in-charge of a watch and this responsibility requires more service than just 3-6 months offshore experience. We will reduce this service time in this proposal to 12 months for the near coastal mate and retain the limit at 6 months for the inland mate. Many comments from certain areas of the country requested further reductions in service for the mate license to 90 days experience. As has been done in the past, local Coast Guard policy may allow for a reduced service time for specifically limited licenses. Service and examination requirements may be modified in those special circumstances. The authority of the OCMI to modify licenses, as appropriate, will remain as before in this new proposal.

58. *Licensing hierarchy:* Many comments requested a table or a license hierarchy which showed the precedence list for all types of licenses. For example, this table would indicate whether a third mate unlimited was superior to a master 200 gross tons or a chief mate was senior to a master 1600 gross tons and whether a second assistant engineer unlimited was superior to a designated duty engineer. While a license hierarchy table or chart would be very helpful for everyone involved in the licensing process including the applicants, those serving on vessels, and the Coast Guard in administering the system, it is extremely difficult to equate different types of licenses. There are many variables

which specify the authority for each license such as tonnage limitations, route limitations, horsepower limitations, trade or vessel-type restriction, inspected versus uninspected vessel restriction (although we are trying to delete those in nearly all licenses), and also the rank of the license itself such as a third mate or mate, a chief mate or a limited master. Some assumptions have been made which will help to explain our position with respect to license transitions and equivalents in the proposed license structure charts. Some of these are: (1) The assumption that inspected vessel licenses authorize the holder to serve on uninspected vessels within the limitations placed on the license; (2) Ocean or near coastal route restrictions on a license enable a person to serve in inland waters within the limitations of the license; and, (3) Certain licenses such as pilot and operator would have to be kept separate, by definition, from this standard chart. In developing the flow charts, the Coast Guard considered the total amount of service required for each individual license and the depth of the examination required. Although the licenses are rarely needed or issued, those for auxiliary sail or sail vessels of over 200 gross tons would require a master or mate to obtain an amount of service in that mode of propulsion in order to have the sail or auxiliary sail endorsement to the license.

With all of these considerations, it is our opinion that a license hierarchy would be confusing and subject to much interpretation. The proposed flow charts imply much of the precedence; the Marine Safety Manual and published policy will further amplify and comparisons as necessary.

59. *Continuing education and training:* The Coast Guard and international philosophy regarding training and education for the maritime industry is one which encourages additional training. The proposed initiatives for training not only will result in a more qualified and well-rounded mariner, but will also allow substitution of training time in an approved course for a portion of the required sea service for many licenses. The new technological advances are partially responsible for the proposals because vessels' equipment and operating methods have become increasingly sophisticated. The Coast Guard realizes that a mariner must keep abreast of all new maritime practices in order to remain competent and perform at the high levels demanded of personnel. Another consideration is the introduction of minimal manning of new vessels in

service today. This inhibits mariners from pursuing while underway. The Coast Guard's opinion is that shore based training can provide experience equal to or greater than some experience gained during normal sea tours. This thinking has also led us to simulator training which we have discussed previously. Our philosophy is also reinforced by international agreements and conventions which specifically recommend various training courses and also allow the substitution of training for underway service.

Of course, in order for these training courses to be accepted by the Coast Guard they must be "approved". "Approval" means that the course, the curriculum, physical plant, the instructors and just about all details of an educational program are evaluated by our local Coast Guard office and also by Headquarters. The approved course may be substituted for a part of an examination, for required training, or for required service time toward licenses and certificates. Some comments received to the docket on this point were very strongly against any substitution of sea time by any type of training. The Coast Guard feels that a specified amount of sea service is most essential to ensure that mariners get the experience they need to be competent professionals; however, the importance of training must also be recognized. By providing an incentive for mariners and ensuring that the schools are quality training institutions, the Coast Guard hopes to encourage mariners to attend these approved courses.

60. *Three watch system for uninspected towing vessels:* Many comments expressed a concern about imposing a three watch system on uninspected towing vessels if the operators were to become masters or mates on these vessels. In the Title 46 Codification, specifically 46 U.S.C. 8104(d), an ambiguity was created as to the watch requirement when the term licensed "individuals" was used in place of licensed "officers" as in the predecessor statute. Considering the legislative history of this law, we have concluded that the two watch system continued to apply to the operators (emphasis added) of these vessels. However, in order to serve on an uninspected towing vessel more than 200 miles offshore, (defined as ocean service) master and mate licenses are required in this proposal. The license as operator of uninspected towing vessels is limited to 200 miles offshore and the inland waters of the United States. Therefore, for vessels in ocean service, the three watch system as discussed in

46 U.S.C. 8104(d) will apply. The licensed individuals holding licenses as master or mate for steam or motor vessels of not more than 200 gross tons upon ocean or near coastal waters are subject to the three watch system. Of course, in this case, 46 U.S.C. 8104(g) provides relief from the three watch system when the voyage is less than 600 miles.

61. *Support of comments submitted by the Towing Safety Advisory Committee (TSAC):* Many comments were received which expressed complete support for the comments submitted by TSAC during January 1984. The comments submitted by TSAC are addressed in various other paragraphs in this preamble. For convenience, they are: retention of celestial navigation in exams; maintain existing license renewal procedure; retain creditable service time philosophy; oral examination limited use; acceptance of service on integrated tug barge units; continue towboat operator licenses with an open route; discussion of operators and the three-watch system; use of boundary lines; impact of the 1969 Tonnage Convention; and, a discussion of international negotiations on STCW.

62. *Accreditation board for engineering and technology schools:* Comments were submitted which recommended our accepting a "duly recognized school of technology" as the criteria for training schools which will permit an applicant to obtain a third assistant engineers license. The Coast Guard proposed the phrase "accredited school recognized by the Accreditation Board for Engineering and Technology". We have formalized the list of accepted schools by mentioning the publication which we have used previously under the "duly recognized school of technology" title.

63. *Equate operator of uninspected passenger vessels (ex. MBO) license with mate 200 gross tons:* Comments were received which suggested equating the operator of uninspected passenger vessels license with the mate 200 gross ton license for near coastal or inland service. The Coast Guard agrees with this suggestion. This proposal lowers the service requirement for the mate on near coastal waters from 18 to 12 months and the mate on inland waters remains at 6 months service required. These experience requirements equal those for the license as operator of uninspected passenger vessels. Therefore, we will allow the holder of this license to obtain a mate license by completing the additional examination requirements which were not included on the lesser exam. These subjects may be

determined by comparing the exam requirements between the licenses in subpart 10.900.

64. *Ferry vessel operations:* Some comments requested clarification on ferry vessel service and the opportunity for advancement in that industry. The proposal replaced the ferry vessel license with the inland master license with unlimited tonnage. The progression to that master's license required service time as a mate in the unlimited category. Comments received to the docket suggested an alternative method of accepting service as a pilot on a two for one basis in order to obtain the master's license. The Coast Guard agrees with those comments and will add an alternative method to progress to the master license. Time as First Class Pilot while serving in the deck house, possibly as quartermaster while holding the license as First Class Pilot, will be accepted. This time was usually credited on a two for one basis because pilots normally worked less than a full 8 hour day in this capacity and we will continue that ratio. However, if 8 hour days are spent in that capacity, the local office will evaluate this service on an equivalent one to one basis.

65. *Limited engineer licenses:* Comments suggested removing the route limitations for engineer licenses in the limited category for chief and assistant engineers. With the introduction of the "designated duty engineer" (DDE) license concept, these licenses appear to be unnecessary and are removed from this proposal. The vessels to which these licenses apply are typically manned by a single licensed engineer and the DDE license will suffice. Appropriate changes to the manning regulations are included to reflect this philosophy.

66. *Style and type of licenses:* Some comments were received which suggested using small, laminated cards similar to the size of credit cards in lieu of the typical licenses presently in use. The Coast Guard does not agree with those comments. The laminated credit card size license would be very small and difficult to read the wording required even on licenses for small vessels such as a small passenger vessel or uninspected passenger vessel. These licenses often require many lines and would be unreadable if reduced or abbreviated. It is the responsibility of the mariner to hold and exhibit licenses which authorize service on the vessel which they are employed.

67. *Present authority under licenses:* Many commenters were concerned that they would lose authorities granted to them under their present licenses. For

the transition to the proposed licenses, a cross-over chart is included in this proposal. Furthermore, the Coast Guard has attempted to cover every possible situation in which a person converts to a license in the new system with different route or tonnage limitations. Generally the authorities granted under most limited licenses have been expanded; however, there are some situations where existing license routes (such as lakes, bays, and sounds) authorized people to serve on waters which are presently outside of the COLREGS demarcation lines. These situations have been resolved in this proposal and, if not satisfactory to the applicant, will be resolved on an individual basis at a Regional Examination Center. It is not our intention to remove any authority which a person presently holds under a license by converting to any license in the new system.

68. License transition for certain inland licenses: A number of comments were received concerning the inland licenses (such as master of vessels upon lakes, bays, and sounds) and their conversion to the new system. Because of the unique route limitation of this license and the possibility of service in waters where the International COLREGS apply, it was felt this item was worthy of a special comment in the preamble. As stated before, it is the Coast Guard intention to retain all authorities which license holders had under the old system through to this new proposed licensing system. For the master, lakes, bays, and sound license where the license holder may have served in COLREGS waters, the applicant would convert the license to a master near coastal unlimited. In order to progress to a master unlimited license, the person must have his/her total experience evaluated by Commandant in order to equate to the total service required for the deep sea licenses. An additional examination would also be required.

69. Tonnage categories in 0-200 gross tons range: A number of comments were received which suggested fewer tonnage categories in the 0-200 gross ton range. The Coast Guard does not agree with that suggestion and prefers the 50 ton increments as was originally proposed. In present regulations there are 25 ton increments between 0-100 gross tons for the small passenger vessel license. We have extended the tonnage limitation to 200 gross tons and maintained the four tonnage categories. In our opinion, it is preferable to keep the 50 ton increments to distinguish different sizes of vessels and the unique handling characteristics between them. Certainly most license holders will serve on vessels between 0-100 gross tons in the small passenger vessel category. For these personnel, the two tonnage increments, 0-50 and 50-100 should satisfy their licensing needs. For the 150 and 200 gross ton categories, we provided direct methods to obtain the higher tonnage endorsements in this proposal.

70. Removal of river mate (non-navigating) license: Due to statutory changes and the rarity of this position on present inland vessels, the Coast Guard decided to eliminate the river mate license. Although this license will not be issued as an original in the future, those persons holding the license may continue to renew. Newly created mate licenses in the 1600 gross ton and unlimited tonnage categories may be utilized in the future.

71. General changes to manning regulations: Part 157, Manning of Vessels is being relocated to Subchapter B Part 15 for convenience in referring to the licensing and certification regulations. In addition, the regulations are being reorganized to a format which will make them easier to follow and the language is being updated to clarify the intent of the various regulations. Redundant or outdated regulations have been eliminated or combined to simplify the regulations.

Changes to the manning regulations have been made to reflect practices involving manning of vessels having automation or which use labor saving devices and also as necessitated by legislative changes. Included in these changes is a definition of maintenanceperson to reflect the use of such personnel on board vessels having a maintenance department. The maintenanceperson can be employed aboard vessels having reduced manning requirements based on automation and the use of labor saving devices throughout the vessel as need dictates. There would be no legal restriction as to the use of members of the maintenance department anywhere on these vessels. While the maintenanceperson would not be considered a watchstander, that person could be utilized as backup to the watch personnel and to augment the watch personnel in times of emergency or as the matter deemed appropriate during times when circumstances dictate. The certificate of inspection may stipulate that specific qualifications be held by the maintenancepersons to assure that the personnel used during periods of augmentation are properly trained to perform the duties which might be expected of them.

Further, the permitted use of a designated duty engineer as identified in Part 10 is found in § 15.825. The responsibility of the master for setting watches is clarified, and the definition of sailors is updated to more accurately reflect the use of able seamen and ordinary seamen aboard modern vessels. The utilization of pilots is the subject of two separate regulatory projects (CGD 77-084 and CGD 84-060) and § 15.815 is reserved for insertion of those regulations. Should these regulatory proposals be completed first, the existing regulations in Part 157 will be inserted in this section as an interim measure.

Complete List of New and Retained Licenses and Those Corresponding Licenses

Licenses in new structure	Eliminated corresponding licenses
I. DECK LICENSES	
A. Ocean or Near Coastal Service	
1. Master ocean steam or motor vessels of any gross tons (retained).....	a. Master coastwise any gross tons.
2. Master near coastal steam or motor vessels of any gross tons (new).....	b. Master ocean freight or towing steam or motor vessels of not more than 3,000 gross tons—new license would have tonnage limit.
3. Chief mate ocean steam or motor vessels of any gross tons (retained).....	a. Chief mate coastwise any gross tons.
4. Chief mate near coastal steam or motor vessels of any gross tons (new).....	b. Chief mate ocean freight and towing vessels of not more than 3000 gross tons.

Complete List of New and Retained Licenses and Those Corresponding Licenses—Continued

Licenses in new structure	Eliminated corresponding licenses
5. Second mate ocean steam or motor vessels of any gross ton (retained).	a. Second mate coastwise any gross tons.
6. Second mate near coastal steam or motor vessels of any gross tons (new).	
7. Third mate ocean steam or motor vessels of any gross tons (retained).	
8. Third mate near coastal steam or motor vessels of any gross tons (new).	a. Third mate coastwise any gross tons.
9. Master ocean or near coastal steam or motor vessels of not more than 1,600 gross tons (new).	a. Master coastwise (if limited tonnage). b. Master uninspected vessels. c. Master freight and towing vessels (other than inland) of not more than 1000 gross tons. d. Master coastwise towing vessels of not more than 750 gross tons.
10. Mate ocean or near coastal steam or motor vessels of not more than 1,600 gross tons (new).	a. Mate uninspected vessels. b. Mate freight and towing vessels (other than inland) of not more than 1000 gross tons. c. Chief mate ocean or coastwise towing vessels of not more than 750 gross tons.
11. Master ocean or near coastal steam or motor vessels of not more than 500 gross tons (new).	a. Master mineral and oil industry vessels of not more than 500 gross tons. b. Master passenger vessels of not more than 300 gross tons. c. Master yachts.
12. Mate ocean or near coastal steam or motor vessels of not more than 500 gross tons (new).	d. Master pilot boats of not more than 300 gross tons. a. Mate mineral and oil industry vessels of not more than 500 gross tons. b. Mate pilot boats of not more than 300 gross tons.
13. Master ocean or near coastal vessels of not more than 200 gross tons (new).	a. Ocean operator.
14. Mate ocean or near coastal vessels of not more than 200 gross tons (new).	
15. Master mobile offshore unit (new) [reserved]	
16. Mate mobile offshore units (new) [reserved]	
17. Master uninspected fishing industry vessels (retained)	
18. Mate uninspected fishing industry vessels (retained)	
19. Operator near coastal uninspected towing vessels (retained)	
20. Second class operator near coastal uninspected towing vessels (retained).	
21. Operator of uninspected passenger vessels upon near coastal routes (new—ex. MBO).	a. Operator of uninspected passenger vessels on ocean routes not more than 100 miles offshore.
B. Inland Service	
1. Master Great Lakes and inland steam or motor vessels of any gross tons (new).	a. Master Great Lakes.
2. Master inland steam or motor vessels of any gross tons (new)	a. Master, lakes, bays and sounds steam or motor vessels. b. Master ferry vessels. c. Master rivers. d. Master or pilot of steam yachts (if unlimited tonnage). e. Master passenger barges (if unlimited tonnage).
3. Mate Great Lakes and inland steam or motor vessels of any gross tons (new).	a. Mate Great Lakes. b. Mate ferry vessels.
4. Master Great Lakes and inland steam or motor vessels of not more than 1,600 gross tons (new).	c. Inland mate (non-navigating). a. Master freight and towing vessels of not more than 1,000 gross tons on inland routes. b. Master or pilot of steam pilot boats on inland routes. c. Master steam yachts on inland routes. d. Master passenger barges upon inland routes.
5. Mate Great Lakes and inland steam or motor vessels of not more than 1,600 gross tons (new).	a. Mate freight and towing vessels of not more than 1000 gross tons on inland routes. b. Mate or pilot of steam pilot boats on inland routes. a. Operator, water other than ocean or coastwise (same propulsion modes).
6. Master Great Lakes and inland vessels of not more than 200 gross tons (new).	
7. Mate Great Lakes and inland vessels of not more than 200 gross tons (new).	
8. Pilot (retained)	
9. Operator uninspected towing vessels upon inland routes (retained)	
10. Second class operator uninspected towing vessels upon inland routes (retained).	
11. Operator uninspected passenger vessels upon inland waters (retained—ex. MBO).	

Complete List of New and Retained Licenses and Those Corresponding Licenses—Continued

Licenses in new structure	Eliminated corresponding licenses
II. ENGINEER LICENSES	
1. Chief engineer steam and/or motor vessels unlimited (retained)..... 2. First assistant engineer steam and/or motor vessels unlimited (retained). 3. Second assistant engineer steam and/or motor vessels unlimited (retained). 4. Third assistant engineer steam and/or motor vessels unlimited (retained). 5. Designated duty engineer (new)..... 6. Chief engineer uninspected fishing industry vessels (retained)..... 7. Assistant engineer uninspected fishing industry vessels (retained).....	a. Chief engineer uninspected motor vessels. b. Chief engineer motor ferry vessels. c. Chief engineer motor towing vessels. d. Chief engineer mineral and oil industry vessels. e. Assistant engineer uninspected motor vessels. f. Assistant engineer motor ferry vessels. g. Assistant engineer motor towing vessels. h. Assistant engineer mineral and oil industry vessels. i. First assistant engineer motor towing or ferry vessels.
III. OTHER LICENSES/CERTIFICATES	
A. Radio officer (retained):	
B. Certificates of registry as staff officer (retained)	
1. Chief purser..... 2. Purser..... 3. Senior assistant purser..... 4. Junior assistant purser..... 5. Surgeon..... 6. Professional nurse..... 7. Endorsements on certificates of registry: a. Marine physician assistant..... b. Hospital corpsman.....	

Regulatory Evaluation

These proposed regulations are considered to be non-major under Executive Order 12291 and significant under the DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). A full draft regulatory evaluation has been prepared and placed in the rulemaking docket. It may be inspected or copied at the Marine Safety Council (G-CMC/21) [CGD 81-059], Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, D.C. 20593 from 8 a.m. to 4 p.m. Copies may also be obtained by referring to the "For Further Information Contact" paragraph.

The proposed regulations serve to implement the intent of recent legislation and simplify the administration of nearly all aspects of the merchant marine personnel licensing system. Implementation would not increase manning requirements upon the vessels concerned nor place any significant additional burden upon the private or public sectors. There would be an increase in training requirements

regarding firefighting for deck and engineer officers in offshore service.

The additional firefighting training requirement for certain licensed personnel had been addressed and analyzed in another regulatory proposal on tankerman. In fact, this training is very similar to that proposed for tankerman. The regulatory evaluation for CGD 79-116 and 79-116a considered the impact of the firefighting training requirement on all licensed and unlicensed personnel serving on tank vessels. While the tankerman proposal addressed approximately 63% of the licensed officers in the merchant marine, the current proposal extends the requirements to all deck officers serving on vessels over 200 gross tons and engineers on vessels over 1,000 horsepower (which effectively increases the vessel basis from only those greater than 1,000 gross tons to all of those greater than 200 gross tons).

The analysis was also based on a requirement for renewal recertification—this proposal requires the training only upon original license

issuance or raise of grade of license if the applicant has not received the training at the original application. Another factor which will markedly decrease the economic impact is that many licensed officers have received this training in recent years. Virtually all unlimited licensed personnel in the last 10 years have been trained at a schoolship or union training facility with firefighting training included in their curriculum. It must also be noted that tanker companies as a matter of course, require all sailing personnel (license and unlicensed) to attend firefighting training prior to reporting aboard. On all commercially contracted MSC vessels for military support or government services, the U.S. Government requires all personnel to have attended firefighting training. Furthermore, there are now 10 firefighting schools with interim Coast Guard approval for classrooms, field, or both aspects of training. When the original analysis was prepared there were only four schools and competition did not play a role in the cost factor.

In general, the approximate costs (in constant 1985 dollars) of the regulatory proposal associated with the requirement for firefighting training are obtained in the following manner:

(a) Estimate the number of all active licensed mariners who will be affected by the training requirement;

(b) Subtract the number of officers who have completed the firefighting training (after discounting a percentage who may not be actually sailing on their licenses). We must also subtract a percentage who may have been trained as unlicensed personnel;

(c) Multiply this total by the sum of the average cost per course (basic and advanced) and the travel/per diem costs;

(d) Further, we must estimate the number of new licensed personnel each year (total new licenses issued) who must comply with the training requirement and have not been trained already as part of their usual training in order to calculate the recurring costs; and,

(e) Multiply this total by course costs and travel/per diem charges.

Summarizing the facts in the analysis, the totals are:

(a) Including all active unlimited license holders (11,602), licensed positions in the offshore drilling industry required as a result of proposed regulations in CGD 81-059a (771), the mineral and oil industry, although many vessels are under 200 gross tons and included here (6,000), and the fishing industry (2,520), the total number of all active licensed mariners affected is 20,893;

(b) The total number of officers who have received the training is approximately 19,000 (of the over 40,000 licensed and unlicensed personnel trained since 1975). It is estimated that 30-40% of those trained are actively sailing on their licenses; therefore, approximately 6,650 officers in the 20,893 filed were trained as officers. Furthermore, it is estimated that another 5% of the total 40,000 persons trained were unlicensed people who have since been licensed and are sailing on their licenses; therefore, another 2,006 officers were trained through this method. The approximate total (a very conservative figure) of previously trained officers is $6,650 + 2,006 = 8,656$;

(c) The cost per course ranges between \$100 and \$400, with an average of \$150. Travel costs average \$250 per person; per diem is \$85 per day for a 4-6 day course. Therefore, the start up cost for firefighting training is:

$20,893 \text{ off.} - 8,656 \text{ off.} [\$150 \text{ course} + (\$85 \times 5) + \$250 \text{ travel}] 12,237 [400 + 425] = 12,237 (825) = \$10,095,525$

(d) For the recurring costs, the number of new licensed personnel each year (from CG license statistics) who would be affected by the firefighting training requirement is 2,131. From this total, we subtract those persons at state and federal maritime academies who already obtain the training as part of their basic training (998 per year). Those engineer students from union schools which require the training (100 per year) and those progressing from unlicensed ratings (approx. 102). Therefore, the total number of new officers each year requiring the training is estimated to be: $2131 - (998 + 100 + 102) = 931$ officers

(e) To calculate the recurring costs, multiply the total of (d) by course costs and travel/per diem charges.

$931 [\$150 \text{ course} + (\$85 \times 5) + 250] 931 [400 + 425] = \$768,075$

There are many quantifiable and unquantifiable benefits which will result from the firefighting training: reductions in vessel casualties; reductions in personnel injuries and deaths; and reductions in pollution. Most major vessel casualties result from collisions, groundings, and fires and explosions—and most of these accidents result from a combination of human error, lack of training, poor vessel maintenance, or poor quality of inspection. This formalized firefighting training is a recognition on the Coast Guard's part (and internationally) that there is a need for vessel personnel to possess a uniform minimum level of ability to cope with potential emergencies resulting from casualties aboard ship. This is a basic step forward in training a major portion of the U.S. merchant marine in a vital area of ship safety. The Coast Guard feels that the firefighting training requirements will provide an assured minimum level of knowledge to those most likely to have to initially respond to fires on board ship.

Improved awareness of safety among licensed personnel is an unquantifiable benefit which will have many indirect tangible benefits. The Coast Guard feels that improved awareness of safety procedures will result in improved safety practices. This, in turn, will further result in a decrease of fire and explosion related personnel and vessel casualties.

Regarding the tangible economic benefits which will result from the proposed firefighting training, the economic analysis and evaluation prepared for another regulatory proposal [CGD 79-116, and available in the Marine Safety Council office] was

referenced. The essence of the analysis is summarized here. Total economic benefits may range from \$26.5 million to \$28.7 million based on previous vessel and personnel casualties involving fire and explosions during a ten year period. The below list summarizes the benefits based on three ranges—10% for low range, 20% for mid range, and 30% for high range of benefits.

Benefits Area	Low	Mid	High
Vessel casualties (millions)	\$25.5	\$25.5	\$25.5
Personnel injuries	4,117	8,234	12,351
Pollution reduction	1,052,450	2,219,283	3,224,047
Total	26,556,567	27,727,517	28,736,398

The figures are based on the three primary categories of quantifiable losses resulting from the related casualties during the ten year span. Recognizing that the firefighting training may not in itself, remedy the identified causes of the casualties without additional tankerman training, the field of vessels whose officers will be trained has also dramatically increased. Where the original study addressed only tankers, we are now addressing all types of vessels (with their various fire and explosion related casualties) of over 200 gross tons in offshore service. Furthermore, the tankerman study included the firefighting training for unlicensed personnel; in this proposal, we extended the training to all officers on many vessels (1000 mineral and oil vessels, 420 fishing vessels) which should drastically increase the economic benefits.

The primary benefits of this proposal are to simplify the licensing regulations, simplify the procedures involved in obtaining a license, and to enhance opportunities for careers in the merchant marine by providing a license progression for all mariners. The number of types of licenses issued will be decreased in the proposed regulations from approximately 100 to 41. This decrease will result in substantial time and associated cost savings to the public as, in the proposal, one license may replace two or more trade restricted or specialized licenses. Additional savings to the public will result by decreasing the number of license examinations from approximately 78 to 27. These exams required between four hours and four days to complete. Applicants may also be reexamined more frequently with shorter waiting periods between sessions in this proposal.

The agency certifies that this proposal will not have a significant economic impact on a substantial number of small

entities. These proposed rules apply to licenses for individuals only. The residual effect on training schools may be: a minor modification in some course structures to reflect exam topics for licenses; course title changes to reflect new license titles; and, possibly some course combining to account for the deletion of some trade restricted licenses.

This proposed rulemaking contains no new information collection requirements. The information collection requirements that it does contain have been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and have been approved by OMB. The section numbers and the corresponding OMB approval numbers are listed in section 10.107.

List of Subjects

46 CFR Part 10

Seamen, Marine safety, Navigation (water), Passenger vessels.

46 CFR Part 35

Barges, Tank vessels, Marine safety, Navigation (water), Reporting and recordkeeping requirements.

46 CFR Part 157

Seamen, Vessels.

46 CFR Part 175

Marine safety, Passenger vessels.

46 CFR Part 185

Marine safety, Navigation (water), Passenger vessels, Reporting requirements.

46 CFR Part 186

Marine safety, Passenger vessels, Seamen.

46 CFR Part 187

Marine safety, Passenger vessels, Seamen.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Parts 10, 15, 35, 157, 175, 185, 186, and 187 of Title 46, Code of Federal Regulations as set forth below:

1. The authority citation for Part 10 is revised to read as follows:

Authority: 46 U.S.C. 7101; 49 CFR 1.46(b).

2. By revising the table of contents for Part 10 to read as follows:

SUBCHAPTER B—MERCHANT MARINE OFFICERS AND SEAMEN

PART 10—LICENSING OF MARITIME PERSONNEL

Subpart 10.100—General

Sec.

- 10.101 Purpose of regulations.
- 10.102 Authority for regulations.
- 10.103 Definitions of terms used in this part.
- 10.105 Regional examination centers.
- 10.107 Paperwork approval.

Subpart 10.200—General Requirements for all Licenses and Certificates of Registry

- 10.201 Eligibility for licenses, general.
- 10.202 Issuance of licenses.
- 10.203 Quick reference table for license requirements.
- 10.204 Appeals.
- 10.205 Requirements for original licenses and certificates of registry.
- 10.207 Requirements for raise of grade of license.
- 10.209 Requirements for renewal of license.
- 10.211 Creditable service and equivalents for licensing purposes.
- 10.213 Sea service as a member of the Armed Forces of the United States and on vessels owned by the United States as qualifying experience.
- 10.215 Modification or removal of limitations.
- 10.217 Examination procedures and denial of licenses.
- 10.219 Issuance of duplicate license.
- 10.221 Parting with license.
- 10.223 Suspension and revocation of license.

Subpart 10.300—Training Schools With Approved Courses

- 10.301 Applicability.
- 10.302 Course approval.
- 10.303 General standards.
- 10.304 Substitution of training for required service.
- 10.305 Radar observer qualifying courses.
- 10.307 Training schools with approved radar observer courses.

Subpart 10.400—Professional Requirements for Deck Officers' Licenses

- 10.401 Ocean and near coastal licenses.
- 10.402 Tonnage requirements for ocean or near coastal licenses for vessels of over 1600 gross tons.
- 10.403 Deck license structure.
- 10.404 Service requirements for master of ocean steam or motor vessels of any gross tons.
- 10.405 Service requirements for chief mate of ocean steam or motor vessels of any gross tons.
- 10.406 Service requirements for second mate of ocean steam or motor vessels of any gross tons.
- 10.407 Service requirements for third mate of ocean steam or motor vessels of any gross tons.
- 10.410 Ocean and near coastal licenses as

Sec.

- master and mate of vessels of not more than 1600 gross tons.
- 10.411 Tonnage limitations for licenses as master or mate of vessels of not more than 200 gross tons.
- 10.413 Service requirements for mate of near coastal steam or motor vessels of not more than 200 gross tons.
- 10.415 Service requirements for master of near coastal steam or motor vessels of not more than 200 gross tons.
- 10.417 Service requirements for mate of ocean steam or motor vessels of not more than 500 gross tons.
- 10.419 Service requirements for mate of near coastal steam or motor vessels of not more than 1600 gross tons.
- 10.421 Service requirements for master of ocean steam or motor vessels of not more than 200 gross tons.
- 10.423 Service requirements for master of ocean steam or motor vessels of not more than 500 gross tons.
- 10.425 Service requirements for mate of ocean steam motor vessels of not more than 1600 gross tons.
- 10.427 Service requirements for master of ocean steam or motor vessels of not more than 1600 gross tons.
- 10.430 Licenses for the Great Lakes and Inland waters.
- 10.431 Tonnage requirements for Great Lakes and inland licenses for vessels of over 1600 gross tons.
- 10.433 Service requirements for master of Great Lakes and inland steam or motor vessels of any gross tons.
- 10.435 Service requirements for master of inland steam or motor vessels of any gross tons.
- 10.437 Service requirements for mate of Great Lakes and inland steam or motor vessels of any gross tons.
- 10.440 Tonnage limitations and service requirements for licenses as master or mate of Great Lakes and inland vessels of not more than 1600 gross tons.
- 10.442 Service requirements for master of Great Lakes and inland steam or motor vessels of not more than 1600 gross tons.
- 10.444 Service requirements for mate of Great Lakes and inland steam or motor vessels of not more than 1600 gross tons.
- 10.450 Tonnage limitations for licenses as master or mate of Great Lakes and inland vessels of not more than 200 gross tons.
- 10.452 Service requirements for master of Great Lakes and inland steam or motor vessels of not more than 200 gross tons.
- 10.454 Service requirements for mate of Great Lakes and inland steam or motor vessels of not more than 200 gross tons.
- 10.460 Special deck license structure.
- 10.462 Licenses for master or mate of uninspected fishing industry vessels.
- 10.464 Licenses for operator of uninspected towing vessels.
- 10.466 Licenses for operator of uninspected passenger vessels.
- 10.468 Licenses for mobile offshore drilling units. [reserved]

- Sec.
10.470 Figure 10.470 MODU licenses.
[reserved]
10.480 Radar observer.
- Subpart 10.500—Professional Requirements for Engineer Officers' Licenses**
- 10.501 Grade and type of engineer licenses issued.
10.502 Additional requirements for engineer licenses.
10.503 Horsepower limitations.
10.504 Engineer license structure.
10.510 Service requirements for chief engineer of steam and/or motor vessels.
10.512 Service requirements for first assistant engineer of steam and/or motor vessels.
10.514 Service requirements for second assistant engineer of steam and/or motor vessels.
10.516 Service requirements for third assistant engineer of steam and/or motor vessels.
10.520 Service requirements for designated duty engineer of steam and/or motor vessels.
10.530 Licenses for engineers of uninspected fishing industry vessels.
10.540 Licenses for mobile offshore drilling units. [Reserved]
- Subpart 10.600—Licensing of Radio Officers**
- 10.601 Applicability.
10.603 Requirements for radio officer licenses.
- Subpart 10.700—Professional Requirements for Pilots' Licenses**
- 10.701 Application for original license.
10.703 Service requirements.
10.705 Endorsement to master or mate license as first class pilot or the addition of route(s) to a first class pilot's license.
10.707 Required examinations for first class pilots.
10.709 Physical examination requirements for a license or endorsement as first class pilot.
10.711 Limitations.
10.713 Requirements for maintaining current knowledge of waters to be navigated.
10.715 Evaluation of experience not listed.
- Subpart 10.800—Registration of Staff Officers**
- 10.801 Applicability.
10.803 Grades of certificates issued.
10.805 General requirements.
10.807 Experience requirements for registry.
10.809 Experience requirements for ratings endorsed on certificate of registry.
- Subpart 10.900—License Examination Subjects**
- 10.901 General provisions.
10.903 Licenses requiring examinations.
10.905 Examination reference information.
10.907 Master of ocean or near coastal steam or motor vessels of any gross tons.
- Sec.
10.909 Chief mate of ocean (or near coastal) steam or motor vessels of any gross tons.
10.911 Master of ocean (or near coastal) steam or motor vessels of not more than 500 to 1600 gross tons.
10.913 Third mate of ocean (or near coastal) steam or motor vessels of any gross tons.
10.915 Mate of ocean (or near coastal) steam or motor vessels of not more than 500 or 1600 gross tons.
10.917 Mate (and operator of uninspected passenger vessels) of ocean or near coastal vessels of not more than 200 gross tons.
10.919 Second class operator uninspected towing vessels upon near coastal/inland/western river routes.
10.921 Master of Great Lakes and inland or master of inland steam or motor vessels of any gross tons.
10.923 Mate of Great Lakes and inland steam or motor vessels of any gross tons.
10.925 Master of Great Lakes and inland steam or motor vessels of not more than 1600 gross tons.
10.927 Mate of Great Lakes and inland steam or motor vessels of not more than 1600 gross tons.
10.929 Mate (and operator of uninspected passenger vessels) of Great Lakes and inland vessels of not more than 200 gross tons.
10.931 Mobile offshore drilling units. [reserved]
10.933 Mobile offshore drilling units. [reserved]
10.935 Master of uninspected fishing industry vessels.
10.937 Mate of uninspected fishing industry vessels.
10.950 Subjects for engineer officers' licenses.
- Authority: 46 U.S.C. 7101; 49 CFR 1.46(b).
3. Subpart 10.01 (§§ 10.01-1 through 10.01-7) is redesignated as Subpart 10.100 (§§ 10.101 through 10.107) and , revised to read as follows:
- Subpart 10.100—General**
- § 10.101 Purpose of regulations.
- (a) The purpose of the regulations in this part is to provide a comprehensive means of determining the qualifications an applicant must possess in order to be eligible for a license as deck, engineer, pilot, or radio officer on merchant vessels, or a license to operate uninspected towing vessels or uninspected passenger vessels, or for a certificate of registry as staff officer.
- (b) With few exceptions, these regulations do not specify or restrict licenses to particular types of service such as tankships, freight vessels or passenger vessels. However, it is incumbent upon all licensed personnel to become familiar with all unique characteristics of each vessel served upon as soon as possible after reporting aboard for duty. As appropriate for a deck or engineer license, this includes

but is not limited to: maneuvering characteristics of the vessel; proper operation of the installed navigation equipment; firefighting and lifesaving equipment; stability and loading characteristics; and main propulsion and auxiliary machinery.

(c) The regulations in subpart 10.300 prescribe the requirements applicable to all approved training courses which will determine if a training course is acceptable as a partial substitute for service, for an examination requirement, or as training required for a particular license or license endorsement.

§ 10.102 Authority for regulations.

(a) *Deck and engineer officers' licenses.* The regulations regarding requirements for deck and engineer officers' licenses interpret or apply Title 46, U.S. Code, sections 2101, 3301, 3302, 3703, 7101-7106, 7109, 7111, 7112, 8103, 8304, and 8901-8904.

(b) *Radio Officers.* The regulations regarding requirements for radio officers' licenses interpret or apply Title 46, U.S. Code, sections 7101-7103, 7105-7108, and 7318.

(c) *Operators' of uninspected passenger vessels licenses.* The regulations regarding requirements for operators' of uninspected passenger vessels licenses interpret or apply Title 46, U.S. Code, section 8903.

(d) *Operator and second class operator of uninspected towing vessels.* The regulations regarding requirements for operator and second class operator of uninspected towing vessels licenses interpret or apply Title 46, U.S. Code, section 8904.

(e) *Staff officers.* The regulations regarding requirements for certificates of registry as staff officers interpret or apply Title 46, U.S. Code, sections 7101, 7102, 7104, 7105, 7107, 7108, and 8302.

§ 10.103 Definitions of terms used in this part.

(a) *Oceans.* This term means the waters outside of the COLREGS demarcation line as defined in 33 CFR Part 80.

(b) *Near coastal.* This term means waters not more than 200 miles offshore.

(c) *Western Rivers* means the Mississippi River, its tributaries, South Pass, and Southwest Pass, to the navigational demarcation lines dividing the high seas from harbors, rivers, and other inland waters of the United States, and the Port Allen-Morgan City Alternate Route, and that part of the Atchafalaya River above its junction with the Port Allen-Morgan City Alternate Route including the Old River and the Red River.

(d) *Great Lakes* means the Great Lakes and their connecting and tributary waters including the Calumet River as far as the Thomas J. O'Brien Lock and Controlling Works (between mile 326 and 327), the Chicago River as far as the east side of the Ashland Avenue Bridge (between mile 321 and 322), and the Saint Lawrence River as far east as the lower exit of Saint Lambert Lock.

(e) *Inland Waters* means the navigable waters of the United States shoreward of the COLREGS demarcation lines as defined in 33 CFR Part 80, including the Great Lakes, except where noted.

(f) *Year*. For the purpose of this part, the term "year" is defined as 360 days.

(g) *Month*. For the purpose of this part, the term "month" is defined as 30 days.

(h) *Day*. For the purpose of this part, the term "day" is defined as eight hours of watchstanding or day-working not to include overtime. On vessels where a 12 hour working day is authorized and practiced, such as on a six-on, six-off watch schedule, each work day may be creditable as one and one half days of service.

(i) *Master* means the officer having command of a vessel.

(j) *Chief Mate* means the deck officer next in rank to the master and upon whom the command of the vessel will fall in the event of the incapacity of the master.

(k) *Mate* means a qualified officer in the deck department other than the master.

(l) *Chief Engineer* means any person responsible for the mechanical propulsion of a vessel and who is the holder of a valid license as chief engineer.

(m) *First Assistant Engineer* means the engineer officer next in rank to the chief engineer and upon whom the responsibility for the mechanical propulsion of the vessel will fall in the event of the incapacity of the chief engineer.

(n) *Assistant Engineer* means a qualified officer in the engine department.

(o) *Designated Duty Engineer* means a qualified engineer, who may be the sole engineer on vessels with an unattended or periodically unmanned engine room.

(p) *Horsepower*. For the purpose of this part, the term "horsepower" means the total maximum continuous shaft horsepower of all the vessel's main propulsion machinery.

(q) *Mobile Offshore Drilling Unit* [reserved].

(r) *Original license*. The first deck, engineer or radio officer license issued to any person by the Coast Guard is considered an original license.

(s) *Endorsement* means a provision added to a license which alters its scope or application. An example of an endorsement is a tonnage limitation increase, a pilot license route addition, or a radar observer qualification.

(t) *Raise of grade* means an increase in the level of authority and responsibility associated with a license within a particular tonnage, horsepower, or trade category.

(u) *Oral examination* means a license examination as described in subpart 10.900 of this Part verbally administered and transcribed by an examiner.

(v) *Officer in Charge, Marine Inspection (OCMI)*. When the term "Officer in Charge, Marine Inspection" or "OCMI" is used in the Part, it means the officer or individual so designated at one of the locations of the regional examination centers listed in § 10.105 of this Part.

§ 10.105 Regional examination centers.

Licensing and certification functions are performed only by the Officer in Charge, Marine Inspection, at the following locations:

Boston, MA	Toledo, OH
New York, NY	Long Beach, CA
Baltimore, MD	San Francisco, CA
Charleston, SC	Portland, OR
Miami, FL	Seattle, WA
New Orleans, LA	Anchorage, AK
Houston, TX	Juneau, AK
Memphis, TN	Honolulu, HI
St. Louis, MO	

§ 10.107 Paperwork approval.

(a) This section lists the control numbers assigned by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (P.L. 96-511) for the reporting and recordkeeping requirements in this part.

(b) The following control numbers have been assigned to the sections indicated:

- (1) OMB 2115-0006: 46 CFR 10.201, 10.202, 10.205, 10.207, 10.209
- (2) OMB 2115-0501: 46 CFR 10.205
- (3) OMB 2115-0502: 46 CFR 10.205
- (4) OMB 2115-0514: 46 CFR 10.201, 10.202, 10.205, 10.207, 10.209
- (5) OMB 2115-0111: 46 CFR 10.302, 10.303, 10.304, 10.480

4. Subpart 10.02 (§§ 10.02-1 through 10.02-33) is redesignated as Subpart 10.200 (§§ 10.201 through 10.223) and revised to read as follows:

Subpart 10.200—General Requirements for All Licenses and Certificates of Registry

§ 10.201 Eligibility for licenses, general.

(a) The applicant must establish to the satisfaction of the Officer in Charge, Marine Inspection that he or she possesses all of the qualifications

necessary, e.g. age, experience, character references and recommendations, physical examination, citizenship and pass a professional examination, as appropriate, before a license is issued.

(b) No person is eligible for a license who has been convicted by a court of record of a violation of the dangerous drug laws of the United States, the District of Columbia, or any state or territory of the United States, within three years prior to the date of filing the application (this period may be extended up to ten years after conviction, if the gravity of the facts or circumstances of the case so warrant such actions) or who, unless he or she furnishes satisfactory evidence of cure, has ever been the user of or addicted to the use of a dangerous drug.

(c) An applicant for a license must demonstrate an ability to speak and understand English as found in the navigation rules, aids to navigation publications, emergency equipment instructions, machinery instructions, and radiotelephone communications instructions.

(d) An applicant for a license must meet the requirements for recent service specified in § 10.202(e).

(e) No license may be issued to any person who is not a citizen of the United States with the exception of operator of uninspected passenger vessels limited to vessels not documented under the laws of the United States.

(f) Except as specified in this paragraph, no license may be issued to a person who has not attained the age of 21 years.

(1) A license as third mate, third assistant engineer, mate of vessels of 200-1600 gross tons, operator of uninspected towing vessels, or radio officer may be granted an applicant who has reached the age of 19 years, but no such license may be raised in grade before the holder has reached the age of 21 years.

(2) A license as master or mate of vessels of 0-200 gross tons upon inland waters, second class operator of uninspected towing vessels, mate of vessels of 0-200 gross tons upon near coastal waters, or operator of uninspected passenger vessels may be granted an applicant who has reached the age of 18 years.

(g) Persons serving or intending to serve in the merchant marine service are recommended to take the earliest opportunity of ascertaining, through examination, whether their visual acuity, and color vision, where required, are such as to qualify them for service in that profession. Epilepsy, insanity,

senility, acute venereal disease or neurosyphilis, badly impaired hearing, or other defect, if this condition would render the applicant incompetent to perform the ordinary duties of an officer at sea, are causes for denial of a license.

§ 10.202 Issuance of licenses.

(a) Applications for original license, raise of grade, extension of route, or increase in scope must be current and up-to-date with respect to service and the physical examination, as appropriate.

(b) Any person who is found qualified under the requirements set forth in this part is issued an appropriate license valid for a term of five years, except that a certificate of registry does not expire.

(c) The license is not valid until signed by the applicant and the OCMI (or the designated representative).

(d) Every person who receives an original license or certificate of registry shall take an oath before a designated Coast Guard official that he or she will faithfully and honestly, according to their best skill and judgment, without concealment or reservation, perform all the duties required by law and obey all lawful orders of superior officers. Such an oath is binding upon all subsequent licenses issued to that person unless specifically renounced in writing.

(e) The applicant for any original license, increase in scope (except for pilot licenses), or raise of grade of license must have at least three months' qualifying service on vessels of appropriate tonnage or horsepower within the 36 months immediately preceding the date of application.

(f) If an Officer in Charge, Marine Inspection refuses to grant an applicant the license for which applied, the OCMI will furnish the applicant, if requested, a written statement setting forth the cause of denial.

(g) If an Officer in Charge, Marine Inspection modifies the service or examination requirements in this Part to satisfy the unique qualification requirements of an applicant, the license is limited on its face to reflect this modification.

§ 10.203 Quick reference table for license requirements.

The following table 10.203 provides a guide to the requirements for the various licenses. Provisions in the reference sections are controlling.

TABLE 10.203.—QUICK REFERENCE TABLE FOR LICENSE REQUIREMENTS

License category	Requirements/qualifications								
	Minimum age	Citizenship requirement	Physical exam required	Experience requirements	Recommendations and character check	Firefighting certificate	Professional exam requirements	Recency of service	First aid and CPR requirements
Masters/mates and operator of uninspected passenger vessels.	21-10.201(f). Note: Exceptions.	Yes. 10.205(c). Note: Exception.	Yes. 10.205(d). Note: (d)(2).	Yes. 10.205(e). 10.400, all.	Yes. 10.201(a). 10.205(f).	Yes. 10.205(g). Note: For service on vessels of over 200 GT in ocean or near coastal waters.	Yes. 10.205(h). 10.900.	Yes. 3 months in past 36 months. 10.202(e).	Yes. 10.205(i).
Engineers.	21-10.201(f). Note: Exceptions.	Yes.	Yes. 10.205(d). Note: (d)(3).	10.205(e). 10.500, all.	Yes. 10.201(a). 10.205(f).	Same. Note: For service on vessels of over 1,000 HP in ocean or near coastal waters.	Yes. 10.205(h). 10.900.	Yes. 3 months in past 36 months. 10.202(e).	Yes. 10.205(i).
All license raises of grade.	21.	Yes.	10.207(e). Note: (e)(1).	10.207(c). 10.400, 10.500.	Yes.	Same application. 10.207(f).	10.207(d).	Yes. 3 months in past 36 months. 10.202(e).	NA.
All license renewals.	21.	Yes.	10.205(e). Note: Exceptions. Staff officer not renewed.	10.205(d).	10.209(b).	NA.	10.205(d).	NA.	NA.
Pilot.	21.	Yes.	Yes. 10.709.	10.703. 10.705(a). 10.715.	Yes. 10.201(a). 10.205(f).	NA.	10.707.	Yes. 10.703. 10.705(a). 10.713(a).	Yes. 10.205(i).
M.O.D.U. (Reserved)									
Uninspected fishing industry vessels.	21.	Yes.	Yes. 10.205(d). Note: (d)(2).	Deck: 10.462. Eng: 10.530.	Yes. 10.201(a). 10.205(f).	Same as deck/eng. above.	Yes. 10.205(h). 10.900 (oral).	Yes. 3 months in past 36 months. 10.202(e).	Yes. 10.205(i).
Uninspected towing vessels.	Operator: 19. 10.201(f). 2/c operator: 18. 10.201(f)(2).	Yes.	Yes. 10.205(d). Note: (d)(2).	10.464.	Yes. 10.201(a). 10.205(f).	NA.	Yes. 10.205(j). 10.900.	Yes. 3 months in past 36 months. 10.202(e).	Yes. 10.205(i).
Radio officer.	19. 10.201(f)(1).	Yes.	Yes. 10.205(d). Note: (d)(2).	10.600.	Yes. 10.201(a). 10.205(f).	NA.	NA.	NA.	Yes. 10.205(i).
Staff officer.	21.	Yes.	No.	10.807.	Yes. 10.201(a). 10.205(f).	NA.	NA.	NA.	NA.

§ 10.204 Appeals.

(a) Any person affected by a decision or action of the Officer in Charge, Marine Inspection, may:

(1) Appeal to the District Commander in whose jurisdiction the decision or action was made; and,

(2) Appeal the decision of the District Commander to the Commandant.

(b) Each appeal must be in writing, filed within 30 days after the date of the decision or action that is being appealed, and contain:

(1) A description of the decision or action that is being appealed; and,

(2) The appellant's reason why the decision or action should be set aside or revised.

(c) Any decision being appealed remains in effect until set aside or revised.

§ 10.205 Requirements for original licenses and certificates of registry.

(a) General. The applicant for an original license or certificate of registry shall present satisfactory documentary

evidence of eligibility in respect to the requirements of this section. All applicants shall make written application on a Coast Guard furnished form.

(b) *Minimum age.* The applicant shall present satisfactory proof of age as prescribed in paragraph 10.201(f) of this part. This evidence may be any of the items submitted to establish citizenship.

(c) *Citizenship.* (1) The OCMI may reject any evidence of citizenship that is not believed to be authentic. Acceptable evidence of citizenship may be a certified copy or original of the following:

(i) Birth certificate or birth registration.

(ii) Certificate of Naturalization.

(iii) Baptismal certificate or parish record recorded within one year after birth.

(iv) Statement of a practicing physician certifying attendance at the birth and that he or she possesses a record showing the date and location at which it occurred.

(v) State Department passport.

(vi) A continuous discharge book, certificate of identification, or merchant mariner's document issued by the Coast Guard which shows the holder as a United States citizen.

(vii) Delayed certificate of birth issued under a State seal in the absence of any collateral facts indicating fraud in its procurement.

(viii) Certificate of Citizenship issued by the United States Immigration and Naturalization Service.

(2) If none of the requirements set forth in paragraphs (c)(1)(i) through (c)(1)(viii) of this section can be met by the applicant, the individual shall make a statement to that effect, and may submit data of the following character for consideration:

(i) Report of the Census Bureau showing the earliest available record of age or birth. Request for such information should be addressed to the Personal Census Service Branch, Bureau of the Census, Pittsburgh, Kansas 66762. In making such request, the use of Form BC-600, Application for Search of Census Records, furnished by the Bureau is required.

(ii) Affidavits of parents, relative, or two or more responsible citizens of the United States stating citizenship.

(iii) School records, immigration records, or insurance policies.

(d) *Physical examination.* (1) All applicants for an original license must pass an examination given by a licensed physician and present a completed Coast Guard physical form, or the equivalent, executed by the physician to the OCMI. This form must provide information on

the applicant's acuity of vision, color sense, and general physical condition. This examination must have been completed prior to submission of the application and not more than 12 months prior to issuance of the license. (Physical examinations are not required for staff officers.)

(2) For an original license as master, mate, pilot, or operator, the applicant must have correctable vision to at least 20/40 in each eye and uncorrected vision of at least 20/200 in the better eye. The color sense must be determined to be satisfactory when tested by any of the following methods:

(i) Pseudoisochromatic Plates (Dvorine, 2nd Edition; AOC; revised edition or AOC-HRR; Ishihara 16-, 24-, or 38-plate editions).

(ii) Eldridge—Green Color Perception Lantern.

(iii) Farnsworth Lantern.

(iv) Keystone Orthoscope.

(v) Keystone Telebinocular.

(vi) SAMCTT (School of Aviation Medicine Color Threshold Tester).

(vii) Titmus Optical Vision Tester.

(viii) Farnsworth Dichotomus D-15 Panel Test.

(3) For an original license as engineer or radio officer, the applicant must have correctable vision of at least 20/50 in each eye and uncorrected vision of at least 20/200 in the better eye. Applicants need only to have the ability to distinguish the colors red, green, blue and yellow. A yarn test is acceptable.

(4) For all applicants, anyone whose uncorrected vision exceeds 20/40 in either eye for deck licenses or 20/50 in either eye for engineer licenses shall wear corrective lenses and carry spare lenses on board a vessel while serving under the authority of the license. (Not applicable to staff officers.)

(5) Where an applicant is not possessed of the vision, hearing, or general physical condition necessary, the OCMI, after consultation with the examining physician, may recommend a waiver to the Commandant if extenuating circumstances warrant special consideration. Applicants may submit to the Officer in Charge, Marine Inspection, additional correspondence, records and reports in support of this request. In this regard, recommendations from agencies of the Federal Government operating government vessels, as well as owners and operators of private vessels, made in behalf of their employees, will be given full consideration. Waivers are not normally granted to an applicant whose corrected vision in the better eye is not at least 20/40 for deck licenses or 20/50 for engineer licenses or whose

uncorrected vision is worse than 20/400 in the better eye.

(e) *Experience or training.* (1) All applicants for original licenses and certificates of registry shall present to the OCMI, letters, discharges or other documents certifying the amount and character of their experience and the names, tonnage and horsepower of the vessels on which acquired. The OCMI must be satisfied as to the authenticity and acceptability of all evidence of experience or training presented. Certificates of discharge are returned to the applicant. The OCMI notes on the application that service represented by these documents has been verified. All other documentary evidence of service or authentic copies thereof are filed with the application. A license is not considered as satisfactory evidence of any qualifying experience.

(2) No original license or certificate of registry may be issued to any naturalized citizen on less experience in any grade or capacity than would have been required of a citizen of the United States by birth.

(3) Experience and service acquired on foreign vessels is creditable for establishing eligibility for an original license, subject to evaluation by the OCMI to determine that it is a fair and reasonable equivalent to service acquired on merchant vessels of the United States, with respect to grade, tonnage, horsepower, waters, and operating conditions. An applicant who has obtained on qualifying experience on foreign vessels shall submit satisfactory documentary evidence of such service (including any necessary translation into English) in the forms prescribed by paragraph (e)(1) of this section.

(4) No applicant for an original license who is a naturalized citizen, and who has obtained experience on foreign vessels, will be given a grade of license higher than that upon which he or she has actually served while acting under the authority of a foreign license.

(f) *Character check and references.* (1) Each applicant for an original license shall submit the written recommendations concerning the applicant's character and habits of life from a master and two other licensed officers of vessels on which the applicant has served. For a license as engineer or as pilot at least one of the other recommendations must be from the chief engineer or licensed pilot, respectively, or a vessel on which the applicant has served. Where an applicant qualifies for a license through an approved training school, one of the character references must be an official

of that school. For a license for which no commercial experience may be required, such as: mate 0-200 gross tons, operator of uninspected passenger vessels, operator of uninspected towing vessels, radio officer or certificate of registry, the applicant may have the written recommendations of three persons who have knowledge of the applicant's character.

(2) Each applicant's fingerprints are taken during the application process, except applicants for license as master/mate 0-200 gross tons, motorboat operator, or operator and second class operator of uninspected towing vessels. In the case of applicants for the excepted licenses, if the OCMI feels that a fingerprint check is necessary, fingerprints are taken.

(3) The fingerprints are checked against the records of law enforcement and other government agencies. The application of any person may be rejected when information has been brought to the attention of the OCMI which indicates that the applicant's habits of life and character are such as to warrant the belief that the applicant cannot be entrusted with the duties and responsibilities of the license for which application is made. In the event an application is rejected, the applicant is notified in writing of the reason(s) for rejection and advised that the appeal procedures in § 10.204 apply. No examination is given in this type of case pending the Commandant's decision on appeal.

(4) An applicant remains eligible for an original license while on probation as a result of administrative action under Part 5 of this Chapter. An original license issued to an applicant on probation will be subject to the same probationary conditions as were imposed against the applicant's other certificates or licenses and the offense for which the applicant was placed on probation will be considered in determining his or her fitness to hold the license applied for. An applicant may not take an examination for an original license during any period when a suspension without probation or a revocation is effective against the applicant's certificate or an appeal from these actions is pending.

(g) *Firefighting Certificate.* An applicant for a master or mate's license for service on vessels of 200 gross tons or less in ocean service or over 200 gross tons in ocean or near coastal service, or an engineer's license for service on vessels of over 1,000 horsepower in ocean or near coastal service must present a certificate of completion from a firefighting course of instruction which has been approved by the Commandant.

The course must have been completed within five years before the date of application for the license requested. During the five year period from [Effective date of regulations], applicants must have completed a marine firefighting training course that is in substantial compliance with both the basic and advanced sections of the International Maritime Organization (IMO) Resolution A.437(XI) "Training of Crews in Fire-Fighting", as determined by the cognizant OCMI within whose zone the course was conducted.

(h) *First aid and cardiopulmonary resuscitation (CPR) course certificates.* All applicants for an original master or mate license for service on vessels of over 200 gross tons, or an original engineer license for service on vessels of over 1,000 horsepower must present to the OCMI:

(1) A certificate indicating completion of a first aid course within the past 12 months from:

(i) the American National Red Cross "Standard First Aid and Emergency Care" or "Multi-media Standard First Aid" course; or,

(ii) a Coast Guard approved first aid training course; and,

(2) A currently valid certificate of completion of a CPR course from:

(i) the American National Red Cross; (ii) the American Heart Association; or,

(iii) a Coast Guard approved CPR training course.

(i) *Professional examination.* (1) When an applicant's experience and training are found to be satisfactory and the applicant is eligible in all other respects, the OCMI examines the applicant, in writing; except that, if the license is to be limited to uninspected fishing industry vessels, the applicants may request an oral-assisted examination, a summary of which shall be placed in the applicant's license file. The alternative of an oral-assisted examination is also available to applicant for licenses limited to 500 gross tons. If there is demonstrated difficulty in reading and understanding the questions, the oral-assisted examination may be offered. Any license based on an oral-assisted examination is limited to the specific route and type of vessel upon which the majority of experience was obtained. The instructions for administration of examinations and the lists of subjects for all licenses are contained in Subpart 10.900.

(2) When the license application of any person has been approved, the applicant should take the required examination as soon as practicable. If the applicant cannot be examined

without material delay at the office where the application is made, the applicant may request that the examination be given at another office.

(3) The qualification requirements for "radar observer" are contained in § 10.480.

(4) An examination is not required for license as Radio Officer or Certificate of Registry.

§ 10.207 Requirements for raise of grade of license.

(a) *General.* Before any person is issued a raise of grade of license, the applicant shall present satisfactory documentary evidence of eligibility. Applications must be on a Coast Guard furnished form.

(b) *Surrendering old license.* Upon the issuance of a new license for raise of grade, the applicant shall surrender the old license to the OCMI. If requested, the old license is returned to the applicant after cancellation.

(c) *Experience or training.* (1) Applicants for raise of grade of license shall establish that they possess the age and experience qualifications necessary before they are entitled to a raise of grade of license.

(2) Applicants for raise of grade of license shall present to the OCMI at a Regional Examination Center, letters, discharges, or other official documents certifying to the amount and character of their experience and the names of the vessels on which acquired. Certificates of discharge are returned to the applicant after entering on the application that service represented by these documents has been verified. All other documentary evidence of service or copies thereof are filed with the application.

(3) No sea service acquired prior to the issuance of the license held is accepted as any part of the service required for raise of grade of that license. However, service acquired prior to issuance of a license may be accepted for certain crossovers, endorsements or increases in scope of a license, as appropriate.

(4) No raise of grade of license may be issued to any naturalized citizen on less experience in any grade than would have been required of a citizen of the United States by birth.

(5) Experience and service acquired on foreign vessels while holding a valid U.S. license is creditable for establishing eligibility for a raise of grade, subject to evaluation by the OCMI, to determine that it is a fair and reasonable equivalent to service acquired on merchant vessels of the United States, with respect to grade, tonnage,

horsepower, waters and operating conditions. An applicant who has obtained the qualifying experience on foreign vessels shall submit satisfactory documentary evidence of such service (including any necessary translations into English) of such service in the forms prescribed by subparagraph (2) of this section.

(6) An applicant remains eligible for a raise of grade of license while on probation as a result of action under Part 5 of this Chapter; however, no applicant will be examined for a raise of grade of license during any period when a suspension without probation or a revocation imposed under Part 5 of this Chapter is effective against the applicant's license or certificate or an appeal from these actions is pending. A raise of grade of license issued to a person on probation will be subject to the same probationary conditions as were imposed against the applicant's other certificates or licenses and the offense for which he or she was placed on probation will be considered on the merits of the case in determining fitness to hold the license applied for.

(d) *Professional examination.* (1) When an applicant's experience and training for raise of grade is found to be satisfactory and he or she is eligible in all other respects, the OCMI examines the applicant in writing, unless an oral-assisted examination is authorized under § 10.205(j)(1). A summary indicating the subjects covered is placed in the applicant's license file. The general instructions and list of subjects are contained in Subpart 10.900.

(2) The qualification requirements for "radar observer" are contained in § 10.480.

(e) *Physical requirements.* (1) An applicant for raise of grade of a license who has not had a physical examination for an original license or renewal of license within three years must submit a certification by a licensed physician that he or she is in good health and has no physical defect or mental infirmity which would render him or her incompetent to perform the ordinary duties of that license.

(2) If the OCMI has reason to believe that an applicant for raise of grade of license suffers from some physical or mental infirmity to a degree that would render the applicant incompetent to perform the ordinary duties of that license, the applicant may be required to submit the results of an examination by a licensed physician that meets the requirements for original license.

(3) An applicant who has lost the sight of one eye may obtain a raise of grade of license, provided that the applicant is qualified in all other respects and that

the visual acuity in the one remaining eye passes the test required for the better eye under § 10.205(d).

(f) *Firefighting Certificate.* Applicants for raise of grade of license who have not previously met the requirements in § 10.205(g), must do so.

§ 10.209 Requirements for renewal of license.

(a) *General.* Applicants for renewal of licenses shall establish that they possess all of the qualifications necessary before they are issued a renewal of license. All applications must be on a Coast Guard furnished form. The applicant may appear in person at any Regional Examination Center listed in § 10.107 or may renew the license by mail at the office which issued the license or holds the applicant's record files, however, the applicant must submit the license to be renewed or a photocopy of same. If requested, the old license is returned to the applicant.

(b) *Fitness.* No license is renewed if it has been suspended without probation or revoked as a result of action under Part 5 of this chapter, or facts which would render a renewal improper have come to the attention of the Coast Guard.

(c) *Professional requirements.* (1) Masters, mates, engineers, pilots, or operators licenses. In order to renew a license, the applicant shall:

(i) present evidence of at least one year of sea service during the past five years; or,

(ii) pass a comprehensive, open book exercise covering general subject matter contained in appropriate sections of Subpart 10.900 to acquaint and familiarize license holders with current practices; or,

(iii) complete an approved refresher training course; or

(iv) present evidence of employment in a position closely related to the operation of vessels (either deck or engineer as appropriate) for at least three years during the past five years. An applicant for a deck license with this type of employment must also demonstrate knowledge on an applicable Rules of the Road exercise.

(2) The qualification requirements for radar observer are in § 10.480 of this part.

(3) Additional service requirements for renewal of a license as pilot are contained in § 10.713 of this part. Pilots must also present an affidavit attesting to their involvement in reportable marine casualties, as explained in § 4.05-1 of this Chapter, since the date of issuance of the current license. Upon review of the investigation reports, the Officer in Charge, Marine Inspection

may deny the renewal if the circumstances warrant such action. The appeal procedures contained in § 10.204 of this part apply.

(4) *Radio officers' licenses.*

An applicant for renewal of a radio officer's license must, in addition to meeting the requirements in this subpart, present a currently valid license as first- or second-class radiotelegraph operator issued by the Federal Communications Commission. This license is returned to the applicant.

(e) *Physical requirements.* (1) An applicant for renewal of a license must submit a certification by a licensed physician that he or she is in good health and has no physical defect or mental infirmity which would render him or her incompetent to perform the ordinary duties of that license.

(2) If the OCMI has reason to believe that an applicant for renewal of license suffers from some physical or mental infirmity to a degree that would render the applicant incompetent to perform the ordinary duties of that license, the applicant may be required to submit the results of an examination by a licensed physician that meets the requirements for original license.

(3) An applicant who has lost the sight of one eye may obtain a renewal of license, provided that the applicant is qualified in all other respects and that the visual acuity in the one remaining eye passes the test required for the better eye under 10.205(d).

(4) An applicant for renewal of a pilot license must also comply with 10.709(g).

(f) *Special circumstances.*—(1) *Period of grace.* Except as provided herein, a license may be renewed within 12 months after it has expired. When an applicant's license expires during a time of service with the Armed Forces and there was no reasonable opportunity for renewal, this period may be extended. The period of military service following the date of expiration as shown on the license may be added to the 12-month period of grace. A license is not valid after the expiration date shown thereon.

(2) *Renewal in advance.* A license may not be renewed more than 12 months in advance of the date of expiration unless the OCMI is satisfied that there are extraordinary circumstances that justify a renewal beforehand.

(3) *Renewal by mail.* (i) An applicant may renew a license by mail by making application to the Coast Guard office which issued the present license or holds the applicant's files. The following documents must be submitted:

(A) A properly completed application on a Coast Guard furnished form;

(B) The license to be renewed or a photocopy of same if unexpired;

(C) A certification from a licensed physician that no physical incapacity exists and that the applicant can satisfactorily perform the duties associated with that license; and.

(D) If the applicant desires to renew a radar observer endorsement, either the radar observer certificate or a certified copy.

(ii) The required open-book exercise may be administered through the mail.

(iii) Upon receipt of the renewed license, the applicant must sign it in order to validate the license.

(g) *Reissue of expired license.*

(1) Whenever an applicant applies for renewal of a license more than 12 months after expiration, the applicant must complete an approved course or pass an examination to demonstrate continued professional knowledge. For a license limited to uninspected fishing industry vessels, an oral examination may be administered. In the case of an expired radio officer's license, the license may be renewed upon presentations of a valid first or second class radiotelegraph operator license issued by the Federal Communications Commission.

(2) The renewed license is assigned the next higher number of issue of present grade and the next higher issue number of all grades.

§ 10.211 Creditable service and equivalents for licensing purposes.

(a) Sea service may be documented for licensing purposes in various forms such as certificates of discharge, pilotage service and billing forms, and letters or other official documents from marine companies signed by appropriate officials or licensed masters. For service on vessels of under 200 gross tons, owners of vessels may attest to the service themselves; however, those who do not own a vessel must obtain letters or other evidence from licensed personnel or owners of documented vessels. This documentary evidence produced by the applicant must contain the amount and nature (e.g. chief mate, assistant engineer) of the applicant's experience, the vessel name, gross tonnage and official numbers, and the routes upon which the experience was acquired.

(b) Port engineer, shipyard superintendent experience, or instructor service may be creditable for a maximum of six months of service for raise of grade of engineer or deck license, as appropriate, using the following formula:

(1) Port engineer, shipyard superintendent or port captain

experience is creditable on a three-for-one basis for a raise of grade. (Twelve months of experience equals four months of creditable service.)

(2) Service as a bona fide instructor at a school of navigation or marine engineering is creditable on a two-for-one basis for a raise of grade to any mate, or master, assistant or chief engineer. (Twelve months of experience equals six months of creditable service.)

(c) Service on mobile offshore drilling units is creditable for raise of grade of license. Evidence of one year service while holding license as third mate or third assistant engineer is acceptable for a raise of grade of unlimited licenses; however, any subsequent raises of grade of unlimited, non-restricted licenses must include a minimum of six months of service on conventional vessels.

(d) Simulator training in combination with a Coast Guard approved training course may be submitted to the Commandant for evaluation and determination of equivalency to required sea service. However, simulator training cannot be substituted for recency requirements of sea service.

(e) Masters and mates licenses for service on vessels of over 200 gross tons may be endorsed for sail, auxiliary sail, or sail assist vessels as appropriate. The applicant must present the equivalent total qualifying service as the conventional licenses including at least one year of deck experience on that specific type of vessel. For example, for a license as master of vessels of not more than 1600 gross tons endorsed for sail auxiliary, the applicant must meet the total experience requirements for the conventional license, including time as mate, and the proper tonnage experience, including at least one year of deck service on appropriately sized auxiliary sail vessels.

(f) Other experience in a marine related area, other than at sea, or sea service performed on unique vessels, will be evaluated by the OCMI and forwarded to the Commandant for a determination of equivalency to traditional service.

§ 10.213 Sea service as a member of the Armed Forces of the United States and on vessels owned by the United States as qualifying experience.

(a) Sea service as a member of the Armed Forces of the United States will be accepted as qualifying experience for an original, raise of grade, or increase in scope of all licenses. In most cases, military sea service will have been performed upon ocean waters; however, inland service, as may be the case on smaller vessels, will be credited in the same manner as conventional

evaluations. The applicant must submit an official transcript of sea service as verification of the service claimed when the application is submitted. The applicant must also provide other necessary information as to tonnage, routes, horsepower, percentage of time underway, and assigned duties upon the vessels which he or she served when interviewed at the Regional Examination Center. Such service will be evaluated by the OCMI and forwarded to the Commandant for a determination of its equivalence to sea service required on merchant vessels and the appropriate grade, class, and limit of license for which the applicant is eligible. Normally, 60% of the total time on board is considered equivalent service; however, the periods of operation of each vessel is evaluated separately. In order to be eligible for a master's or chief engineer's unlimited license, the applicant must have acquired military service in the capacity of Commanding Officer or Engineer Officer, respectively.

(b) Service in deck ratings on military vessels such as Seaman Apprentice, Seaman, Boatswain's Mate, Quartermaster, or Radarman are considered deck service for licensing purposes. Service in other ratings may be considered if the applicant establishes that his or her duties required a watchstanding presence on or about the bridge of a vessel. Service in engineer ratings on military vessels such as Fireman Apprentice, Fireman, Engineman, Machinists' Mate, Machinery Technician or Boiler Tender are considered engineer service for licensing purposes. There are also other ratings such as Electrician, Hull Technician, or Damage Controlman which may be credited when the applicant establishes that his or her duties required watchstanding duties in an operating engine room.

(c) In addition to underway service, members of the Armed Forces may obtain creditable service for periods of assignment to vessels at times other than underway, such as in port, at anchor, or in training. Normally, a 25% factor is applied to these time periods. This experience can be equated with general shipboard familiarity, ship's business, and other related duties. Military sea service gained in other ratings such as Yeoman, Storekeeper, Cook, Baker, etc., may also be considered an equivalent to general shipboard familiarity and may be substituted for up to six months of sea service towards either deck or engineer license.

(d) Sea service obtained on submarines is creditable in the conventional manner for deck and engineer licenses under the provision of paragraph (a) of this section. For application to deck licenses, submarine service may be creditable if at least 25% of all service submitted for the license was obtained on surface vessels (e.g. If four years' total service were submitted for an original license, at least one year must have been obtained on surface craft in order for the submarine service to be eligible for evaluation.)

(e) Service gained in a civilian capacity as commanding officer, master, mate, engineer, or pilot, etc., of any vessel owned and operated by the United States, in any service, in which a license as master, mate, engineer, or pilot was not required at the time of such service, is evaluated by the OCMI and forwarded to the Commandant for a determination of equivalence.

§ 10.215 Modification or removal of limitations.

(a) If an Officer in Charge, Marine Inspection, is satisfied by the documentary evidence submitted that an applicant is entitled by experience, training, and knowledge to an increase in the scope of any license held, any limitations which were previously placed upon the license by that OCMI may be changed.

(b) An OCMI may not change a limitation on any license which that office did not place thereon before full information regarding the reason for the limitation is obtained from the OCMI responsible for the limitation.

(c) No limitation on any license may be changed before the applicant has made up any deficiency in the experience prescribed for the license desired and passed any necessary examination.

§ 10.217 Examination procedures and denial of licenses.

(a)(1) The examinations for all deck and engineer unlimited licenses are repeated at periodic intervals. If an applicant fails one or more sections of an examination, he or she must be reexamined in all of the sections failed. If the applicant does not successfully complete all parts within four months of the first examination, the complete examination must be retaken.

(2) The scheduling of all other deck and engineer license examinations will be at the discretion of the OCMI. In the event of a failure, the applicant may be retested whenever the examination can be scheduled. The applicant must be examined in all of the unsatisfactory sections of the preceding examination. If

the applicant does not successfully complete all parts of the examination within three months, the complete examination must be retaken.

(b) If the OCMI refuses to grant an applicant the license for which applied due to failing to pass a required examination, the applicant is furnished a written statement setting forth the portions of the examination which must be retaken and the date by which the examination must be completed.

§ 10.219 Issuance of duplicate license.

Whenever a person to whom a license has been issued loses the license, that person shall report the loss to any OCMI. A duplicate license may be issued after receiving an affidavit describing the circumstances of the loss and verification of the license record from the marine safety/inspection office where it was issued. A duplicate license is issued for the unexpired term of the lost license and bears the following statement: "This license replaces License Number — issued at — on the above date."

§ 10.221 Parting with license.

If the holder of a license voluntarily parts with it or places it beyond his or her personal control by pledging or depositing it with any other person for any purpose, the holder may be proceeded against in accordance with the provisions of Part 5 of this Chapter, looking to a suspension or revocation of the license.

§ 10.223 Suspension and revocation of licenses.

(a) When the license of any individual is revoked, it is no longer valid for any purpose and any license of the same type subsequently desired must be applied for as an original except as to number of issue.

(b) No person whose license is suspended without probation or has been revoked may be issued another license except upon of the Commandant.

(c) When a license which is about to expire is suspended, the renewal of such license will be withheld until the expiration of the period of suspension.

Subpart 10.03—[Removed]

5. Subpart 10.03 §§ 10.03—through 10.03—20) is removed.

6. Subpart 10.30 (§§ 10.30 through 10.30—7) is redesignated as subpart 10.300 (§§ 101.30 through 10.307) and revised to read as follows:

Subpart 10.300—Training Schools with Approved Courses

§ 10.301 Applicability

This subpart prescribes the general requirements applicable to all approved courses which may be accepted in lieu of service experience or examination required by the Coast Guard.

§ 10.302 Course approval.

(a) The owner or operator of a training school desiring to have a course approved by the Coast Guard shall submit a written request through the appropriate Officer in Charge, Marine Inspection to the Commandant (G-MVP) U.S. Coast Guard, Washington, D.C. 20593, that contains:

(1) A list of the curriculum including a description of and the number of classroom hours required in each subject;

(2) A description of the facility and equipment;

(3) A list of instructors including the experience, background, and the qualifications of each; and

(4) Evidence supporting the need for such approved training.

(b) Unless sooner surrendered, suspended or revoked, an approval for a course at a training school that meets Coast Guard standards expires 24 months after the month in which it is issued, or on the date of any change in the ownership of the school for which it was issued, whichever is earlier.

(c) If the owner or operator of a training school desires to have a course approval renewed, they shall submit a written request to the address listed in paragraph (a) of this section. Unless sooner surrendered, suspended, or revoked, a renewal of the approval expires 60 months after the month it is issued, or on the date of any change in ownership of the school for which it is issued, whichever is earlier.

(d) The Coast Guard notifies each applicant in writing whether or not an approval is granted. If a request for approval is denied, the Coast Guard informs the applicant the reasons for the denial and describes what corrections are required for an approval.

§ 10.303 General standards.

Each school with an approved course must:

(a) Have a modern and well maintained facility that accommodates the students in a safe and comfortable environment conducive to learning.

(b) Have visual aids for realism, including simulators where appropriate, which are modern and well maintained

and sufficient for the number of students to be accommodated.

(c) Give appropriate written or practical examinations in the course material to each student of such a degree of difficulty that a student who successfully completes them could reasonably assume that he or she would pass, on the first attempt, an examination prepared by the Coast Guard and based upon knowledge requirements of the position or endorsement for which the student is being trained.

(d) Keep for each enrolled student for at least 1 year after the end of the students enrollment:

(1) Each written examination, or in the case of a practical test, a report of such test; and

(2) A record of each student's classroom attendance.

(e) Not change its approved curriculum unless that change is approved in writing after the request for change has been submitted in writing through the appropriate Officer in Charge, Marine Inspection to the Commandant (G-MVP), U.S. Coast Guard.

(f) At any time the Officer in Charge, Marine Inspection shall direct, allow the Coast Guard to:

(1) Inspect its personnel facilities, equipment, and records, including scholastic records;

(2) Conduct interviews and surveys of students to aid in course evaluation and improvement;

(3) Assign personnel to observe or participate in the course of instruction; and

(4) Supervise or administer the required examinations or practical demonstrations.

§ 10.304 Substitution of training for required service.

(a) Satisfactory completion of certain training courses approved by the Commandant may be substituted for a portion of the required service for many deck and engineer licenses and for qualified ratings of unlicensed personnel. The list of all currently approved courses of instruction including the equivalent service and applicable licenses and ratings is maintained by Commandant. (G-MVP). Satisfactory completion of an approved training course may be substituted for not more than two-thirds of the required service on deck or in the engine department for deck or engineer licenses, respectively, and for qualified ratings.

(b) Service time gained at an approved training course does not satisfy recent service requirements nor

does training on a simulator; however, any underway service at an approved course may be used for this purpose. An applicant who had met the recent service requirement before entering school will not be penalized by attending the approved training course.

§ 10.305 Radar observer qualifying courses.

(a) A student who takes an approved course of training, including passing both examinations and practical demonstration on a simulator, and who meets the requirements of this section is entitled to an appropriate radar observer certificate:

(1) In a form prescribed by the school that is acceptable to the Coast Guard; and

(2) Signed by the head of the school.

(b) The following radar observer certificates are issued under this section:

(1) Radar Observer (Unlimited).

(2) Radar Observer (Inland Waters).

(3) Radar Observer (Unlimited Renewal).

(4) Radar Observer (Inland Waters Renewal).

(c) A School with an approved radar observer course may not issue a certificate listed in § 10.305(b) to a student unless the student has successfully completed the appropriate curriculum as follows:

(1) Radar Observer (Unlimited).

Classroom instruction, including demonstration and practical exercise using simulators, and examination in the following subjects:

(i) Fundamentals of radar:

(A) How radar works.

(B) Factors affecting the performance and accuracy of marine radar.

(C) Description of the purpose and functions of the main components that comprise a typical marine radar installation.

(ii) Operation and use of radar:

(A) The purpose and adjustment of controls.

(B) The detection of malfunctioning, false and indirect echoes, and other radar phenomena.

(C) The effect on sea return and weather.

(D) The limitation of radar resulting from design factors.

(E) Precautions to be observed in performing maintenance of radar equipment.

(F) Range and bearing measurement.

(G) Effect on size, shape, and composition of ship targets on echo.

(iii) Interpretation and analysis of radar information:

(A) Determining the course and speed of another vessel.

(B) Determining the time and distance of closest point of approach of a crossing, meeting, overtaking, or overtaken vessel.

(C) Detecting changes of course and/or speed of another vessel after its initial course and speed have been established.

(D) Factors to consider when determining change in course and/or speed of a vessel to prevent collision, on the basis of radar observation, of another vessel or vessels.

(iv) Plotting (any method that is graphically correct may be used):

(A) The principles and method of plotting relative and true motion.

(B) Practical plotting problems.

(2) Radar Observer [Inland Waters].

Classroom instruction, including demonstration and practical exercises using simulators and examination in the subjects listed in paragraph (c)(1) of this section including emphasis on the unique problems attendant to Inland Waters, with the exception of paragraph (c)(1)(iv).

(3) Radar Observer [Unlimited Renewal]. Classroom instruction, including demonstration and practical exercises using simulators, and examination, in the subjects listed in paragraphs (c)(1) (iii) and (iv) of this section.

(4) Radar Observer [Inland Waters Renewal]. Classroom instruction, including demonstration and practical exercises using simulators, in the subjects listed in paragraph (c)(1)(iii) of this section.

§ 10.307 Training schools with approved radar observer courses.

The Commandant (G-MVP) U.S. Coast Guard, 2100 Second St., Washington, D.C. 20593, maintains the list of approved schools and specific courses. This information is available by writing or calling the aforementioned address.

Subpart 10.05—[Removed]

7. Subpart 10.05 (§§ 10.05-1 through 10.05-61) is removed.

8. Subpart 10.400 (§§ 10.401 through 10.480) is added to read as follows:

Subpart 10.400—Professional Requirements for Deck Officers' Licenses

§ 10.401 Ocean and near coastal licenses.

(a) Any license issued for service as master or mate on ocean waters qualifies the licensee to serve in the same grade on any waters subject to the limitations of the license without additional endorsement, other than for

pilot routes required for particular waters.

(b) A license issued for service as master or mate on near coastal waters qualifies the licensee to serve in the same grade on near coastal and inland waters as defined in this part, subject to the limitations of the license without additional endorsement, other than for pilot routes required for particular waters.

(c) Near coastal unlimited licenses of comparable grade may be obtained by completing the prescribed examination in Subpart 10.900 while holding a license as unlimited master or mate upon Great Lakes and inland waters.

(d) In order to upgrade the near coastal unlimited license to an ocean unlimited license, six months of deck service upon ocean waters on vessels of over 1600 gross tons must be obtained in addition to completing the additional examination topics.

(e) Graduation from the deck class of the Great Lakes Maritime Academy will qualify the graduate to be examined for a license as third mate near coastal steam or motor vessels of any gross tons.

§ 10.403 Deck license structure.

§ 10.402 Tonnage requirements for ocean or near coastal licenses for vessels of over 1600 gross tons.

(a) All required experience for ocean or near coastal licenses for vessels of any gross tons must be obtained on vessels of over 200 gross tons. At least one-half of the required experience must be obtained on vessels of over 1600 gross tons.

(b) If the applicant for an original or raise of grade of a license as master or mate has not obtained at least 50% of the required qualifying experience on vessels of over 1600 gross tons, a tonnage limitation is placed on the license based on the applicant's qualifying experience. The license is limited to the maximum tonnage on which at least 25% of the required experience was obtained, or 150% of the maximum tonnage on which at least 50% of the service was obtained, whichever is higher. Limitations are in multiples of 1000 gross tons, using the next higher figure when an intermediate tonnage is calculated. When the calculated limitation equals or exceeds 10,000 gross

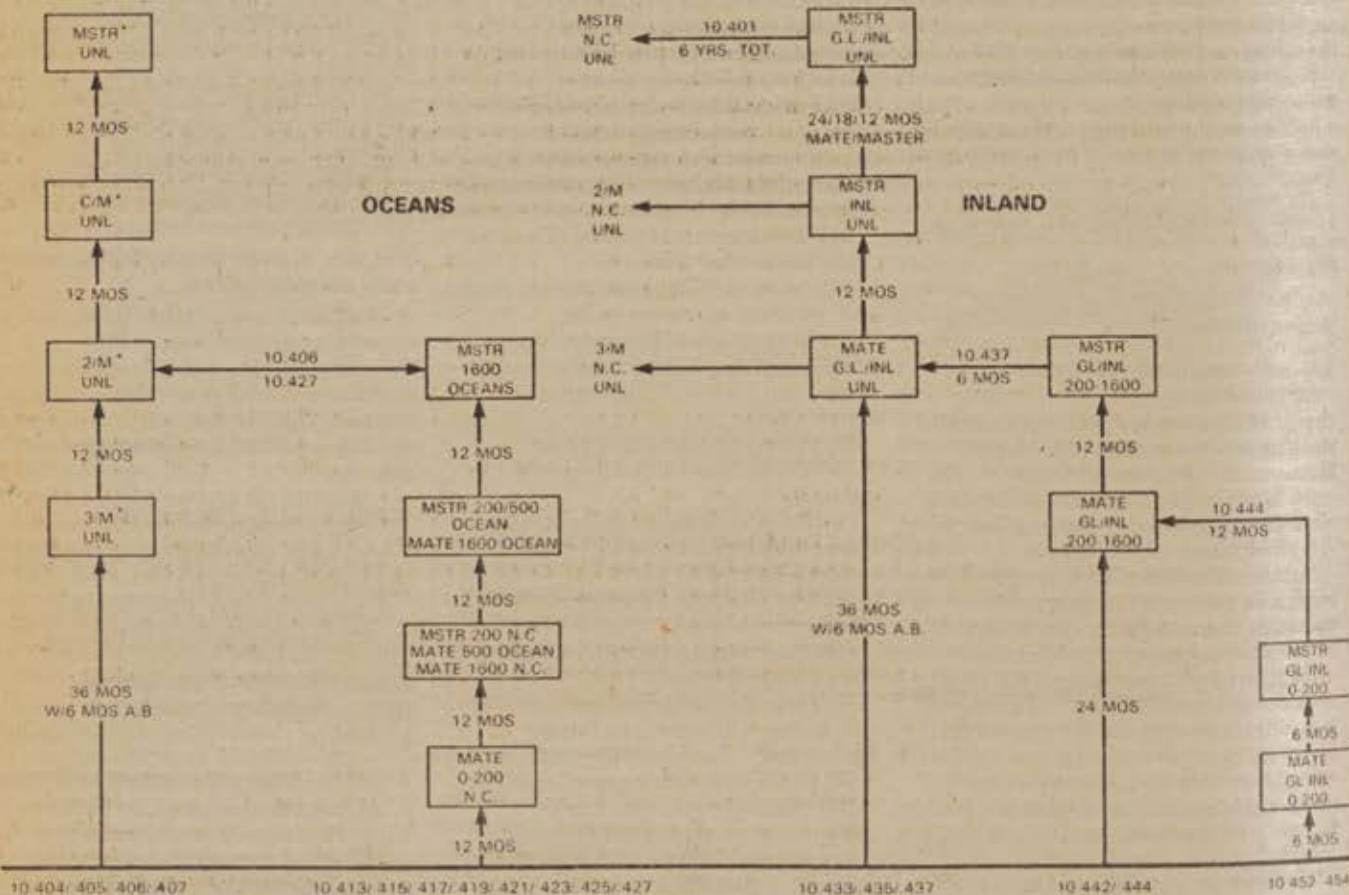
tons, the applicant is issued an unlimited tonnage license.

(c) Tonnage limitations may be raised or removed in the following manner:

(1) When the applicant has six months of service on vessels of over 1600 gross tons in the highest grade licensed, all tonnage limitations are removed.

(2) When the applicant has a total of six months of service on vessels of over 1600 gross tons in any licensed capacity other than the highest grade for which licensed, all tonnage limitations for the grade in which service is performed are removed and the next higher grade license is raised to the tonnage of the vessel on which the majority of the service was performed. The total cumulative service before and after issuance of the limited license may be considered in removing all tonnage limitations.

(3) When the applicant has 12 months of service as able seaman on vessels of over 1600 gross tons or over while holding a license as third mate, all tonnage limitations on the third mate's license are removed.



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10.413/415/417/419/421/423/425/427

10.433/435/437

10.442/444

10.452/454

Licenses for service on vessels of over 1600 gross tons on near coastal routes parallel this structure for service and tonnage requirements. The examination shall contain all subjects except those inappropriate for routes other than oceans, i.e., celestial navigation, ocean sailing problems, etc., as indicated in subpart 10.900. In order to remove the near coastal route restriction at any level, an additional six months ocean service must be presented and any exam deficiencies completed. (See 10.401)

§10.404 Service requirements for master of ocean steam or motor vessels of any gross tons.

The minimum service required to qualify an applicant for license as master of ocean steam or motor vessels of any gross tons is:

- (a) One year of service as chief mate of ocean steam or motor vessels; or,
- (b) One year of service while holding a license as chief mate of ocean steam or motor vessels as follows:
 - (1) A minimum of six months of service as chief mate; and,
 - (2) Service as an officer in charge of a navigational watch accepted on a two-for-one basis (12 months as second or third mate equals six months of creditable service); or,
 - (c) Six months of service as master upon offshore routes while holding a license as master of near coastal steam or motor vessels of any gross tons.

§10.405 Service requirements for chief mate of ocean steam or motor vessels of any gross tons.

The minimum service required to qualify an applicant for license as second mate of ocean steam or motor vessels of any gross tons is:

- (a) One year of service as officer in charge of a navigational watch on ocean steam or motor vessels while holding a license as second mate; or,
- (b) Six months of service as chief mate upon offshore routes while holding a license as chief mate of near coastal steam or motor vessels of any gross tons.

§10.406 Service requirements for second mate of ocean steam or motor vessels of any gross tons.

The minimum service required to qualify an applicant for license as chief mate of ocean steam or motor vessels of any gross tons is:

- (a) One year of service as officer in charge of a navigational watch on ocean steam or motor vessels while holding a license as third mate; or,
- (b) While holding a license as third mate of ocean steam or motor vessels of any gross tons:
 - (1) A minimum of six months of service as officer in charge of a deck watch on ocean steam or motor vessels; in combination with,
 - (2) Service as boatswain, able seaman, or quartermaster while holding a certificate as able seaman, which may be accepted on a two-for-one basis to a maximum allowable substitution of six months (12 months of experience equals 6 months of creditable service); or,
 - (c) While holding a license as master of steam or motor vessels of not more than 1600 gross tons, one year of service as master on vessels of over 200 gross

tons operating on ocean or near coastal waters; or,

(d) While holding a license as master of inland steam or motor vessels of any gross tons, three months of service on deck on vessels operating on ocean or near coastal waters; or,

(e) While holding a license as second mate of near coastal steam or motor vessels of any gross tons, six months of service upon ocean or near coastal routes.

§10.407 Service requirements for third mate of ocean steam or motor vessels of any gross tons.

(a) The minimum service or training required to qualify an applicant for license as third mate of ocean steam or motor vessels of any gross tons is:

- (1) Three years of service in the deck department of ocean steam or motor vessels, six months of which shall have been as able seaman, boatswain, or quartermaster, while holding a certificate as able seaman. Experience gained in the engine department on vessels of appropriate tonnage may be creditable for up to six months of the service requirements for this license;
- (2) Graduation from:
 - (i) The U.S. Merchant Marine Academy (deck curriculum);
 - (ii) The U.S. Coast Guard Academy;
 - (iii) The U.S. Naval Academy;
 - (iv) The deck class of a nautical schoolship approved by and conducted under rules prescribed by the Commandant and listed in Part 166 of Subchapter R (Nautical Schools) of this chapter; or,
- (3) Satisfactory completion of a three year apprentice mate training program approved by the Commandant.

(b) Six months of service as mate upon ocean or near coastal routes while holding a license as third mate of near coastal steam or motor vessels of any gross tons will qualify the applicant for a license as third mate of ocean steam or motor vessels of any gross tons.

§10.410 Ocean and near coastal licenses as master and mate of vessels of not more than 1600 gross tons.

(a) Licenses as master and mate on vessels of not more than 1600 gross tons in offshore service are issued in the following tonnage categories:

- (1) Not more than 1600 gross tons;
 - (2) Not more than 500 gross tons; or,
 - (3) Between 50-200 gross tons in 50 ton increments and with appropriate mode of propulsion such as mechanical, sail, or auxiliary sail.
- (b) Experience gained in the engine department on vessels of appropriate tonnage may be creditable for up to 25 per cent of the service requirements for any mate license in this category.

(c) A license in this category obtained with an oral examination will be limited to 500 gross tons. In order to raise that tonnage limit to 1600 gross tons, the written examination and service requirements must be satisfied.

(d) In order to obtain a master or mate license with a tonnage limit above 200 gross tons, or a license for 200 gross tons or less with an ocean route, the applicant must successfully complete the following training and examination requirements:

- (1) approved firefighting course;
- (2) approved radar observer course;
- (3) qualification as a lifeboatman; and,
- (4) qualification as an able seaman unlimited, able seaman limited, or able seaman special.

§10.411 Tonnage limitations for licenses as master or mate of vessels of not more than 200 gross tons.

(a) All licenses issued for master or mate of vessels of not more than 200 gross tons are issued in 50 ton increments commensurate with the experience of the applicant. Licenses are limited to the highest tonnage vessel upon which the applicant served on deck for a minimum of 30 days, rounded to the higher increment.

(b) The tonnage limitation on these licenses may be raised upon completion of:

- (1) At least 30 days of additional service on deck on a vessel of a higher tonnage; or,
- (2) Six months of service on vessels within the highest tonnage increment on the license. In this case, the tonnage limitation may be raised one increment.

§ 10.413 Service requirements for mate of near coastal steam or motor vessels of not more than 200 gross tons.

(a) The minimum service required to qualify an applicant for license as mate of near coastal steam or motor vessels of not more than 200 gross tons is:

- (1) 12 months of service in the deck department of steam or motor, sail or auxiliary sail vessels operating on ocean or near coastal waters (service on inland waters may be submitted for a maximum of six of the required 12 months)
- (2) Three months of service in the deck department of steam or motor vessels operating on ocean, near coastal or inland waters while holding a license as master of inland steam or motor, sail or auxiliary sail propelled vessels of not more than 200 gross tons.
- (b) The holder of a license as operator of uninspected passenger vessels with a near coastal route endorsement may obtain this license by completing a limited examination.

(c) In order to obtain an endorsement on this license for sail or auxiliary sail vessels, the applicant must submit evidence of three months of service on sail or auxiliary sail vessels.

(d) Upon request, a license as master of near coastal steam or motor vessels may be endorsed as mate of sail or auxiliary sail vessels.

§ 10.415 Service requirements for master of near coastal steam or motor vessels of not more than 200 gross tons.

(a) An applicant for a license as master of steam or motor vessels of not more than 200 gross tons on near coastal routes must have one year of service on ocean or near coastal waters (service on inland waters may substitute for a maximum of six of the required 12 months) as a licensed mate or equivalent supervisory position on the type of vessel specified in the application, while holding a license as mate of ocean or near coastal vessels.

(b) In order to obtain an endorsement on this license for sail or auxiliary sail vessels, the applicant must submit evidence of six months of service on sail or auxiliary sail vessels. The required six months of service may have been obtained prior to issuance of the master's license.

§ 10.417 Service requirements for mate of ocean steam or motor vessels of not more than 500 gross tons.

An applicant for a license as mate of ocean steam or motor vessels of not more than 500 gross tons must have one year of service on ocean or near coastal waters as a licensed mate or equivalent supervisory position while holding a license as mate of ocean or near coastal mechanically propelled or auxiliary sail vessels. Six months of this service must have been on vessels of 50 gross tons or more.

§ 10.419 Service requirements for mate of near coastal steam or motor vessels of not more than 1600 gross tons.

(a) The minimum service required to qualify an applicant for license as mate of near coastal steam or motor vessels of not more than 1600 gross tons is two years of service in the deck department of steam or motor vessels on ocean or near coastal waters, six months of which shall have been as able seaman, boatswain, or quartermaster while holding a certificate as able seaman. All of the experience must have been on vessels of 50 gross tons or over and at least one year must have been on vessels of 100 gross tons or over.

(b) An applicant holding a license as master of inland steam or motor vessels of not more than 1600 gross tons is

eligible for this license upon successful completion of the required examination.

§ 10.421 Service requirements for master of ocean steam or motor vessels of not more than 200 gross tons.

(a) An applicant for a license as master of ocean steam or motor vessels of not more than 200 gross tons must have three years of service on ocean or near coastal waters (service on inland waters may substitute for a maximum of 18 months of the required three years) with two years of service as a licensed master, mate or equivalent supervisory position while holding a license as master or mate of such vessels.

(b) An applicant holding a license as operator of uninspected towing vessels upon near coastal routes is eligible for this license upon presentation of two years of service as second class operator, mate, or equivalent supervisory position while holding a license as second class operator or mate. Completion of a limited examination is also required.

(c) In order to obtain an endorsement on this license for sail or auxiliary sail vessels, the applicant must submit evidence of six months of service on sail or auxiliary sail vessels. The required six months of service may have been obtained prior to issuance of the master's license.

(d) In addition to the required examination topics, the applicant must comply with the requirements listed in 10.410(d).

§ 10.423 Service requirements for master of ocean steam or motor vessels of not more than 500 gross tons.

(a) An applicant for a license as master of ocean steam or motor vessels of not more than 500 gross tons must have three years total service on ocean or near coastal waters with two years of service as a licensed mate or equivalent supervisory position while holding a license as mate. One year of the service as licensed mate or equivalent must have been on vessels of 50 gross tons or over.

(b) An applicant holding a license as operator of uninspected towing vessels upon near coastal routes is eligible for this license after six months' service as operator on near coastal waters and completion of a limited examination. Of the required three and one-half years of service, two years must have been served while holding a license as operator or second class operator.

§ 10.425 Service requirements for mate of ocean steam or motor vessels of not more than 1600 gross tons.

(a) An applicant for mate of ocean steam or motor vessels of not more than

1600 gross tons must have three years of service on ocean or near coastal waters, 12 months of which must be on vessels of 100 gross tons or over, and one year of the total required service must have been as a licensed mate or equivalent supervisory position while holding a license as mate. Six months of the service as licensed master or mate must have been on vessels of 100 gross tons or over.

(b) An applicant for this license may have three years of service in the deck department on ocean or near coastal vessels of 200 gross tons or more including at least six months of service as able seaman.

§ 10.427 Service requirements for master of ocean steam or motor vessels of not more than 1600 gross tons.

(a) An applicant for master of ocean steam or motor vessels of not more than 1600 gross tons must have four years of service on ocean or near coastal waters, two years of which must be on vessels of 100 gross tons or over, and two years of the total required service must have been as a licensed master or mate. One year of the service as licensed mate or equivalent must have been on vessels of 100 gross tons or over.

(b) An applicant holding a license as second mate of ocean steam or motor vessels is eligible for this license upon completion of a limited examination.

§ 10.430 Licenses for the Great Lakes and inland waters.

Any license issued for service on the Great Lakes and inland waters is valid on all of the inland waters of the United States as defined in this Part.

§ 10.431 Tonnage requirements for Great Lakes and inland licenses for vessels of over 1600 gross tons.

(a) All required experience for Great Lakes and inland unlimited licenses must be obtained on vessels of over 200 gross tons. At least one-half of the required experience must be obtained on vessels of 1600 gross tons or over.

(b) Tonnage limitations may be imposed on these licenses in accordance with § 10.402 (b) and (c).

§ 10.433 Service requirements for master of Great Lakes and inland steam or motor vessels of any gross tons.

The minimum service required to qualify an applicant for license as master of Great Lakes and inland steam or motor vessels of any gross tons is:

(a) One year of service as mate/first class pilot while acting in the capacity of first mate of Great Lakes steam or motor vessels of any gross tons; or

(b) One year of service while holding a license as mate/first class pilot of Great Lakes and inland steam or motor vessels of any gross tons as follows:

(1) A minimum of six months of service while acting in the capacity of first mate; and,

(2) Service as second mate accepted on a two-for-one basis (12 months of service equals 6 months of creditable service); or,

(c) Two years of service as master of inland (excluding the Great Lakes) steam or motor vessels of any gross tons.

§ 10.435 Service requirements for master of inland steam or motor vessels of any gross tons.

The minimum service required to qualify an applicant for license as master of inland (excluding the Great Lakes) steam or motor vessels is:

(a) One year of service as mate/first class pilot of Great Lakes or inland steam or motor vessels of any gross tons; or,

(b) Two years of service as wheelsman or quartermaster while holding a mate/first class pilot license.

§ 10.437 Service requirements for mate of Great Lakes and inland steam or motor vessels of any gross tons.

(a) The minimum service required to qualify an applicant for license as mate of Great Lakes and inland steam or motor vessels of any gross tons is:

(1) Three years of service in the deck department of steam or motor vessels, at least three months of which must have been on vessels on inland waters, and at least 6 months of which must have been as able seaman, boatswain, or quartermaster; or,

(2) While holding a license as master of Great Lakes and inland steam or motor vessels of not more than 1,600 gross tons.

(b) Service gained in the engine department on vessels of appropriate tonnage may be creditable for up to six months of the service requirements under paragraph (a)(1) of this section.

§ 10.440 Tonnage limitations and service requirements for licenses as master or mate of Great Lakes and inland vessels of not more than 1,600 gross tons.

(a) All required service for licenses as master or mate of Great Lakes and inland vessels of not over 1,600 gross tons must be obtained on vessels of 50 gross tons or over. At least one-half of the required service must be obtained on vessels of 100 gross tons or over.

(b) No tonnage limitations are imposed between 200-1,600 gross tons.

(c) Service gained in the engine department on vessels of appropriate

tonnage may be creditable for up to 25% of the service requirements for mate.

§ 10.442 Service requirements for master of Great Lakes and inland steam or motor vessels of not more than 1,600 gross tons.

The minimum service required to qualify an applicant for license as master of Great Lakes and inland steam or motor vessels of not more than 1,600 gross tons is:

(a) One year of service as a licensed mate or equivalent supervisory position while holding a license as mate of Great Lakes and inland steam or motor vessels of not more than 1,600 gross tons; or,

(b) Six months of service as operator while holding a license as operator of uninspected towing vessels.

§ 10.444 Service requirements for mate of Great Lakes and inland steam or motor vessels of not more than 1,600 gross tons.

The minimum service required to qualify an applicant for license as mate of Great Lakes and inland steam or motor vessels of not more than 1,600 gross tons is:

(a) Two years of service in the deck department of Great Lakes and inland steam or motor vessels, 6 months of which shall have been as able seaman, boatswain, or quartermaster, or equivalent; or,

(b) One year of service as master of mechanically propelled or auxiliary sail vessels of not more than 200 gross tons on vessels of 50 gross tons or over.

§ 10.450 Tonnage limitations for licenses as master or mate of Great Lakes and inland vessels of not more than 200 gross tons.

(a) All licenses issued for master or mate of vessels of not more than 200 gross tons are issued in 50 ton increments commensurate with the experience of the applicant. Licenses are limited to the highest tonnage vessel upon which the applicant served on deck for a minimum of 30 days, rounded to the highest increment.

(b) The tonnage limitation on these licenses may be raised upon completion of:

(1) At least 30 days of additional service on deck on a vessel of a higher tonnage; or,

(2) Six months of service on vessels within the highest tonnage increment on the license. In this case, the tonnage limitation may be raised one increment.

(c) License holders with at least three years of service on vessels of over 50 gross tons with at least two years in a licensed capacity may be issued a license with a 200 gross ton limitation.

(d) Service gained in the engine room on vessels within this tonnage category

may be creditable for up to 25% of the deck service requirements for mate.

§ 10.452 Service requirements for master of Great Lakes and inland steam or motor vessels of not more than 200 gross tons.

(a) An applicant for a license as master of steam or motor vessels operating on Great Lakes and inland waters must have six months of service as mate or equivalent supervisory position on steam or motor, sail or auxiliary sail vessels while holding a license as mate of Great Lakes and inland vessels. The required six months of service may have been obtained prior to issuance of the master's license.

(b) In order to obtain an endorsement on this license for sail or auxiliary sail vessels, the applicant must have three months of service on sail or auxiliary sail vessels.

(c) Limited masters' licenses for vessels of not more than 100 gross tons upon Great Lakes and inland waters may be issued to applicants to be employed by organizations such as formal camps, educational institutions, yacht clubs, and marinas with reduced service requirements. A license issued under this paragraph is limited to the specific activity and the locality of the camp, yacht club, or marina. In order to obtain this restricted license, an applicant must:

(1) Have four months of service in the operation of the type of vessel for which the license is required; and,

(2) Satisfactorily complete a safe boating course approved by the National Association of State Boating Law Administrators, or those public education courses conducted by the U.S. Power Squadron or the American National Red Cross, or a Coast Guard approved course; and,

(3) Pass a limited examination appropriate for the activity to be conducted and the route authorized.

§ 10.454 Service requirements for mate of Great Lakes and inland steam or motor vessels of not more than 200 gross tons.

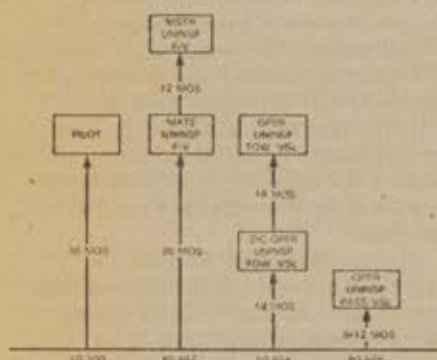
(a) The minimum service required to qualify an applicant for a license as mate of Great Lakes and inland steam or motor vessels is six months of service in the deck department of steam or motor, sail or auxiliary sail vessels.

(b) In order to obtain an endorsement on this license for sail or auxiliary sail vessels, the applicant must submit evidence of three months of service on sail or auxiliary sail vessels.

(c) Upon request, a license as master of steam or motor or sail vessels may be endorsed as mate of auxiliary sail vessels.

(d) The holder of a license as operator of uninspected passenger vessels upon Great Lakes and inland waters may obtain an endorsement as mate of Great Lakes and inland steam or motor vessels of not more than 200 gross tons upon successful completion of an examination on rules and regulations for small passenger vessels.

§ 10.460 Special deck license structure.



§ 10.462 Licenses for master or mate of uninspected fishing industry vessels.

(a) This section applies to licenses for masters and mates of all vessels, however propelled, navigating the high seas, which are documented to engage in the fishing industry, with the exception of:

- (1) Wooden ships of primitive build;
- (2) Unrigged vessels; and,
- (3) Vessels of less than 200 gross tons.

(b) Licenses as master and mate of uninspected fishing industry vessels are issued for ocean waters with tonnage limitations in accordance with the guidance in section 10.402.

(c) For a license as master of uninspected fishing industry vessels, the applicant must have served four years at sea in the deck department of which one year must have been as a licensed mate or equivalent supervisory position.

(d) For a license as mate of uninspected fishing industry vessels, the applicant must have served three years at sea in the deck department.

(e) Applicants may request an oral examination on the subjects listed in § 10.900.

§ 10.464 Licenses for operator of uninspected towing vessels.

(a) Licenses are issued as operator or second-class operator of uninspected towing vessels. These licenses do not authorize service aboard uninspected towing vessels more than 200 miles offshore nor on those of more than 200

gross tons in ocean or near coastal service.

(b) Licenses as operator and second class operator of uninspected towing vessels are endorsed for operation on one or more of the following geographic areas:

- (1) Inland waters (including the Great Lakes);
- (2) Western rivers;
- (3) Near coastal waters;
- (4) A limited local area designated by the Officer in Charge, Marine Inspection.

(c) For a license as second class operator of uninspected towing vessels, an applicant must have:

- (1) At least 18 months of service on deck including 12 months on towing vessels. The service must include at least three months of training or duty in the wheelhouse of towing vessels, and three months of service in each particular geographic area for which endorsement for the license is requested; or,
- (2) At least six months of service on towing vessels while holding a merchant mariner's document endorsed as "Able Seaman Special". The service must include three months on deck in each particular geographic area for which an endorsement is requested, and either two months of training or duty in the wheelhouse, or one month training or duty in the wheelhouse combined with successful completion of a towboat operator course of training approved by the Commandant under subpart 10.300.

(d) For a license as operator of uninspected towing vessels, an applicant must have one of the following:

- (1) Three years of service including the following:
 - (i) Two years on deck of a vessel of 26 feet or over in length;
 - (ii) One year on deck on a towing vessel with at least six months training or duty in the wheelhouse of the towing vessel; and
 - (iii) Three months of service in each particular geographic area for which application is made; or,
- (2) Three years of service on towing vessels including the following:
 - (i) One year on deck on a towing vessel with at least six months of training or duty in the wheelhouse of the towing vessel; and,
 - (ii) Three months of service in each particular geographic area for which application is made; or,
- (3) For a license endorsed for a limited local area, 18 months service on deck on a towing vessel within the local area including at least three months of

training or duty in the wheelhouse of the towing vessel; or

(4) For a license endorsed for a specific geographic area not more than ten miles in length on the inland waters of the United States, six months of service on deck on a towing vessel including at least three months of training or duty in the wheelhouse.

(e) The examination for a license as operator of uninspected towing vessels which will be endorsed for a limited local area is modified by deleting those inappropriate questions.

(f) A person holding a license as second class operator of uninspected towing vessels who is 21 years old and possesses the service required in paragraph (d) of this section may be issued a license as operator without further examination.

(g) A person holding a license as operator of uninspected towing vessels may have that license endorsed as second class operator for a geographic area on which he or she has no operating experience, upon passing an examination for that area. Upon completion of three months of experience in that geographic area, the second class restriction may be removed.

§ 10.466 Licenses for operator of uninspected passenger vessels.

(a) This section applies to all applicants for license to operate a vessel of less than 100 gross tons equipped with propulsion machinery of any type while carrying six or less passengers. An operator of uninspected passenger vessels license, limited on its face to undocumented vessels, may be issued to a person who is not a citizen of the United States.

(b) Operator of uninspected passenger vessels licenses issued for ocean waters will be limited to near coastal waters with no further specific restrictions. Licenses issued for inland waters will include all inland waters, except those licenses issued for a particular local area under paragraph (e) of this section.

(c) For a license as operator of an uninspected passenger vessel, an applicant must have a minimum of six months of experience in the operation of vessels for an inland endorsement or a minimum of 12 months of experience in the operation of vessels, including at least three months of service on vessels operating on ocean or near coastal waters, for a near coastal endorsement.

(e) Limited operator licenses may be issued to applicants from organizations such as formal camps, yacht clubs, educational institutions, and marinas. A license issued under this paragraph will

be limited to the specific activity and the locality of the camp, yacht club or marina. In order to obtain this restricted license, an applicant must:

(1) Have three months of service in the operation of the type of vessel for which the license is requested;

(2) Satisfactorily complete a safe boating course approved by the National Association of State Boating Law Administrators, or those public education courses conducted by the U.S. Power Squadron or the American National Red Cross or a Coast Guard approved course; and,

(3) Pass a limited examination appropriate for the activity to be conducted and the route authorized.

(f) A person holding a limited operator of uninspected passenger vessel license may have the restriction removed upon acquiring the experience required for the basic license and completing additional examination topics.

(g) An applicant for this license restricted to the navigable waters of the United States in the vicinity of Puerto Rico, who speaks Spanish only, will be issued a license restricted to those waters.

§ 10.468 Licenses for mobile offshore drilling units. [Reserved]

§ 10.470 Figure 10.470 MODU licenses [Reserved]

§ 10.480 Radar Observer.

(a) This section contains the requirements that must be met to qualify as radar observer. Part 15 of this chapter specifies the persons who must be qualified as a radar observer.

(b) If an applicant meets the requirements in this section, one of the following radar observer endorsements will be added to a deck officer's license:

(1) Radar Observer (Unlimited).

(2) Radar Observer (Inland Waters).

(c) Endorsement as Radar Observer (Inland Waters) is valid only for those waters covered by the Inland Navigational Rules.

Endorsement as Radar Observer (Unlimited) is valid on all waters.

(d) Except as provided in paragraphs (f) and (g) of this section each applicant for renewal of an endorsement must complete the appropriate course for the endorsement desired and receive the appropriate certificate of training from an approved radar training school.

(e) Each applicant for a radar observer endorsement or for renewal of an endorsement must present the certificate required by paragraph (d) of this section to the Officer in Charge, Marine Inspection.

(f) Applicants for renewal of a radar observer endorsement who reside in

remote areas, including Puerto Rico, the U.S. Virgin Islands, Hawaii, Guam or Alaska, who are able to substantiate to the satisfaction of the Officer in Charge, Marine Inspection, at the office at which renewal is sought their inability to attend an approved radar observer renewal course, may have their endorsement renewed upon successful completion of a written examination, administered by the Coast Guard.

(g) Applicants who possess a radar observer endorsement and reside in other remote geographic areas not covered in paragraph (f) of this section and who are able to substantiate to the satisfaction of Officer in Charge of Marine Inspection, that their absence would disrupt normal movement of commerce, may have their endorsement renewed upon successful completion of a written examination, administered by the Coast Guard.

(h) An endorsement as radar observer issued under this section is valid for 5 years after the month of issuance of the certificate of training from an approved radar training school. The radar observer endorsement is not terminated by the issuance of a new license during this 5 year period.

(i) The month and year of the expiration of the radar observer endorsement is placed on the license.

(j) A radar observer endorsement may be renewed at any time.

(k) A radar observer endorsement valid on and issued prior to November 15, 1982, remains valid until the license expires.

(l) An applicant for renewal of a license that has a radar observer endorsement may renew the license without the radar observer endorsement.

(m) An applicant for renewal of a license that does not have a radar observer endorsement may renew the license without meeting the requirements for a radar observer endorsement.

(n) An applicant who does not have a radar observer endorsement may have a license raised to a higher grade or increased in scope without meeting the requirements for a radar observer endorsement.

(o) An applicant for original license may be issued that license without meeting the requirements for radar observer endorsement.

9. Subpart 10.10 (§§ 10.10-1 through 10.10-29) is redesignated as Subpart 10.500 (§§ 10.501 through 10.540) and revised to read as follows:

Subpart 10.500—Professional Requirements for Engineer Officers' Licenses

§ 10.501 Grade and type of engineer licenses issued.

(a) Licenses are issued in the grades of:

- (1) Chief engineer;
- (2) First assistant engineer;
- (3) Second assistant engineer;
- (4) Third assistant engineer; and
- (5) Designated duty engineer.

(b) Engineer licenses issued in the grades of designated duty engineer of steam and/or motor vessels will allow the holder to serve within any horsepower limitations upon:

(1) Vessels in inland service (other than the Great Lakes) of any gross tons; and,

(2) Vessels of 1600 gross tons or less upon ocean waters or the Great Lakes.

(c) Engineer licenses authorize service on either steam or motor vessels or may be endorsed for both modes of propulsion.

(d) A person holding an engineer license which is restricted to specified waters may serve within the limitations of the license upon those waters as defined in § 10.103 of this part.

(e) A person holding a license as a designated duty engineer within the limitations of the license.

§ 10.502 Additional requirements for engineer licenses.

(a) For all original and raise of grade of engineer licenses, at least one-third of the minimum service requirements must have been obtained on that particular mode of propulsion for which applied.

(b) If a licensed applicant desires to obtain an endorsement on an engineer license in the other propulsion mode (steam or motor), the following alternative methods are acceptable:

(1) Three months of service as an observer in the same licensed capacity on vessels of the other propulsion mode;

(2) Three months of service as a licensed officer at a lower license level on vessels of the other propulsion mode; or,

(3) Six months of service as oiler, watertender, or junior engineer on vessels of the other propulsion mode.

§ 10.503 Horsepower limitations.

(a) Engineer licenses of all grades and types are subject to horsepower limitations. The horsepower limitation placed on a license is based on the applicant's qualifying experience considering the total shaft horsepower

of each vessel on which the applicant has served.

(b) When an applicant for an original or raise of grade of an engineer license has not obtained at least 50% of the required qualifying experience on vessels of 4,000 or more horsepower, a horsepower limitation is placed on the license based on the applicant's qualifying experience. The license is limited to the maximum horsepower on which at least 25% of the required experience was obtained, or 150% of the maximum horsepower on which at least 50% of the service was obtained, whichever is higher. Limitations are in multiples of 1,000 horsepower, using the next higher figure when an intermediate horsepower is calculated. When the limitation as calculated equals or exceeds 10,000 horsepower, an unlimited horsepower license is issued.

(c) The following service on vessels of 4,000 horsepower or over will be considered qualifying for the raising or removing of horsepower limitations placed on engineer licenses:

Six months of service in the highest grade licensed: removal of all horsepower limitations.

(2) Six months of service in any

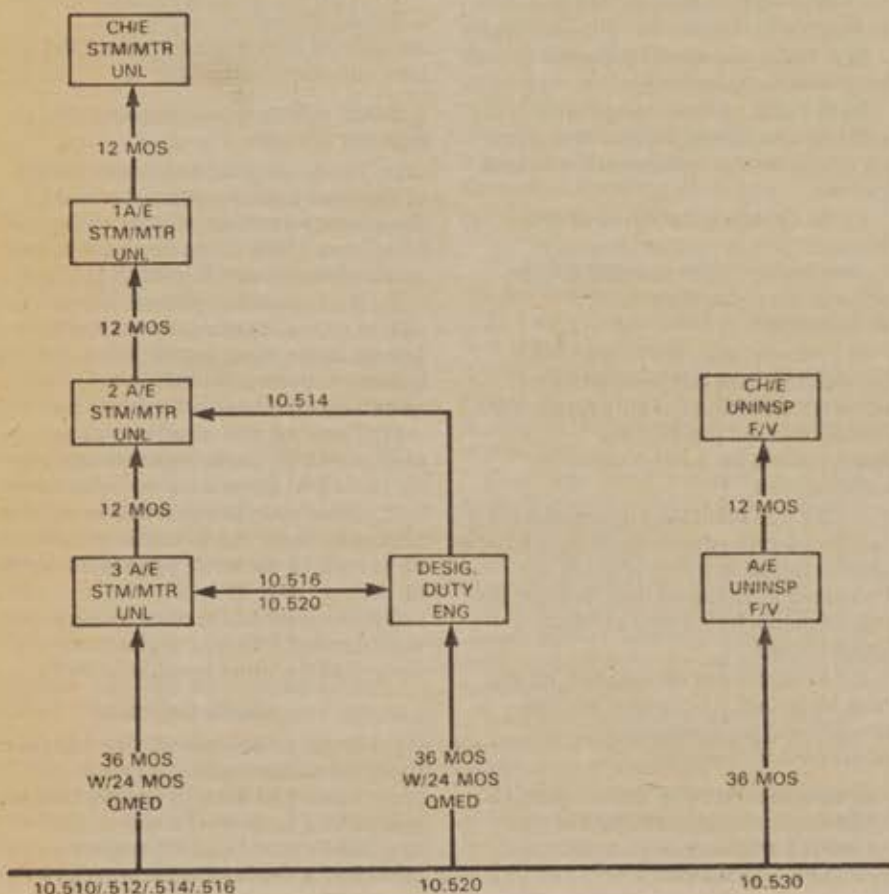
licensed capacity other than the highest grade for which licensed: removal of all horsepower limitations for the grade in which service is performed and raise the next higher grade license to the horsepower of the vessel on which service was performed. The total cumulative service before and after issuance of the limited license may be considered in removing all horsepower limitations.

(3) Twelve months of service as oiler or junior engineer while holding a license as third assistant engineer: removal of all horsepower limitations on third assistant engineer's license.

(4) Six months of service as oiler or junior engineer while holding a license as second assistant engineer: removal of all horsepower limitations on third assistant engineer's license.

(d) Raising or removing horsepower limitations based on service required by paragraph (c) of this section may be granted without further written examination providing the Officer in Charge, Marine Inspection in the Regional Examination Center which issued the applicant's license, considers further examination unnecessary.

§ 10.504 Engineer license structure.



§ 10.510 Service requirements for chief engineer of steam and/or motor vessels.

The minimum service required to qualify an applicant for license as chief engineer of steam and/or motor vessels is:

- (a) One year of service as first assistant engineer; or,
- (b) One year of service while holding a license as first assistant engineer as follows:

- (1) A minimum of six months of service as first assistant engineer; and,
- (2) Service as an engineer officer in charge of a watch accepted on a two-for-one basis (12 months of service as a second or third assistant engineer equals six months of creditable service) to a maximum of six months.

§ 10.512 Service requirements for first assistant engineer of steam and/or motor vessels.

The minimum service required to qualify an applicant for license as first assistant engineer of steam and/or motor vessels is one year of service as an engineer officer in charge of a watch while holding a license as second assistant engineer.

§ 10.514 Service requirements for second assistant engineer of steam and/or motor vessels.

The minimum service required to qualify an applicant for license as second assistant engineer of steam and/or motor vessels is:

- (a) One year of service as an engineer officer in charge of a watch while holding a license as third assistant engineer; or,

- (b) One year of service while holding a license as third assistant engineer of steam or motor vessels which includes:

- (1) A minimum of six months of service as third assistant engineer; and,

- (2) Additional service as a qualified member of the engine department, calculated on a two-for-one basis; or,

- (c) One year of service as designated duty engineer of steam or motor vessels, and passing the appropriate examination described in § 10.900.

§ 10.516 Service requirements for third assistant engineer of steam and/or motor vessels.

(a) The minimum service required to qualify an applicant for license as third assistant engineer of steam and/or motor vessels is:

- (1) Three years of service in the engineroom of vessels, two years of which must have been as a qualified member of the engine department;

- (2) Three years of service as an apprentice to the machinist trade engaged in the construction or repair of marine, locomotive, or stationary engines, together with one year service in the engineroom as oiler, watertender, or junior engineer;

- (3) Graduation from:

- (i) The U.S. Merchant Marine Academy (engineering curriculum);

- (ii) The U.S. Coast Guard Academy;

- (iii) The U.S. Navy Academy; or,

- (iv) The engineering class of a nautical schoolship approved by and conducted under the rules prescribed by the Commandant and listed in Part 166 of Subchapter R (Nautical Schools) of this chapter; or,

- (4) Graduation from the marine engineering course of a school of technology accredited by the Accreditation Board for Engineering and Technology, together with three months of service in the engine department of steam or motor vessels;

- (5) Graduation from the mechanical or electrical engineering course of a school of technology accredited by the Accreditation Board for Engineering and Technology, together with six months of service in the engine department of steam or motor vessels;

- (6) Satisfactory completion of a three-year apprentice engineers training program approved by the Commandant.

- (b) The holder of a license as designated duty engineer of steam and/or motor vessels may obtain a license endorsement as third assistant engineer for the same propulsion mode(s) without further service by successfully completing the examination described in § 10.900.

- (c) Experience gained in the deck department on vessels of 100 gross tons or over can be credited for up to six months of the service requirements under paragraph (a)(1) of this section.

§ 10.520 Service requirements for designated duty engineer of steam and/or motor vessels.

(a) The minimum service required to qualify an applicant for license as designated duty engineer of steam and/or motor vessels is:

- (1) Three years of service in the engineroom of vessels, two years of which must have been as a qualified member of the engine department; or,

- (2) Graduation from or satisfactory completion of those courses of instruction listed in § 10.516.

- (b) Experience gained on deck on vessels over 100 gross tons may be

creditable for up to six months of the service requirements for this license.

§ 10.530 Licenses for engineers of uninspected fishing industry vessels.

(a) The section applies to licenses for chief and assistant engineers of all vessels, however propelled, navigating the high seas, which are documented to engage in the fishing industry, with the exception of:

- (1) Wooden ships of primitive build;
- (2) Unrigged vessels;
- (3) All vessels of less than 200 gross tons.

(b) Licenses as chief engineer and assistant engineer of uninspected fishing industry vessels are issued for ocean waters and are issued with horsepower limitations commensurate with the experience of the applicant.

(c) For a license as chief engineer, the applicant must have served four years of service in the engineroom of vessels of which one year must have been as a licensed assistant engineer or equivalent supervisory position.

(d) For a license as assistant engineer, an applicant must have served three years' service in the engineroom of vessels.

(e) Two-thirds of the required service must have been on motor vessels.

(f) Applicants may request an oral examination on the subjects listed in § 10.900 of this part.

§ 10.540 Licenses for mobile offshore drilling units. [Reserved]

10. Subpart 10.13 (§§ 10.13-1 through 10.13-33) is redesignated as Subpart 10.600 (§§ 10.601 and 10.603) and revised to read as follows:

Subpart 10.600—Licensing of Radio Officers

§ 10.601 Applicability.

The regulations in this subpart implement the provisions in Title 46, U.S. Code, sections 7101-7103, 7105-7108, and 7318, and provide licensing to qualified applicants as radio officer.

§ 10.603 Requirements for radio officer licenses.

(a) Each applicant for an original license or renewal of license shall present a current first or second class radiotelegraph operator license issued by the Federal Communications Commission. The applicant shall enter on the license application form the number, class, and date of issuance of his or her Federal Communications Commission license.

(b) An applicant for license as radio officer shall apply for a merchant mariner's document. This document will

be endorsed "See License as Radio Officer."

(c) The application must also include a complete form CG-2765 "Coast Guard Intelligence Agency Check Request".

10. Subpart 10.07 (§§ 10.07-1 through 10.07-15) is redesignated 10.700 (§§ 10.701 through 10.715) and renumbered as follows:

Subpart 10.700—Professional Requirements for Pilots Licenses

10.07-1	becomes 10.701
10.07-3	becomes 10.703
10.07-5	becomes 10.705
10.07-7	becomes 10.707
10.07-9	becomes 10.709
10.07-11	becomes 10.711
10.07-13	becomes 10.713
10.07-15	becomes 10.715

§ 10.709 [Amended]

12. Section 10.709 as amended as follows:

a. In paragraph (a) by changing the citation "10.02-5(e)(1)-(3) and (7)" to read "10.205(d)".

b. In paragraph (d) by changing the citation "sections 10.02-9(f) (3) and (5)" to read "§ 10.209(f)".

§ 10.711 [Amended]

13. Section 10.711 is amended in paragraph (b)(2) by changing the citation "§ 10.07-3(b) or § 10.07-5(a)(2)" to read "§ 10.703(b) or § 10.705(a)(2)".

14. Subpart 10.25 (§§ 10.25-1 through 10.25-11) is redesignated as Subpart 10.800 (§§ 10.801 through 10.809) and revised to read as follows:

Subpart 10.800—Registration of Staff Officers.

§ 10.801 Applicability.

This subpart provides for the registration of staff officers for employment on vessels documented under the laws of the United States. Staff officers must be registered if serving on most vessels in ocean service or on the Great Lakes.

§ 10.803 Grades of certificates issued.

Staff officers are registered in the following grades:

- (a) Chief purser.
- (b) Purser.
- (c) Senior assistant purser.
- (d) Junior assistant purser.
- (e) Surgeon.
- (f) Professional nurse.

§ 10.805 General requirements.

(a) The applicant for a certificate of registry as staff officer is not required to take any examination; however, the applicant shall present to the Officer in Charge, Marine Inspection a letter

justifying the need for the certificate of registry.

(b) The applicant must hold or apply for a merchant mariner's document issued as a certificate of identification.

(c) Endorsements for a higher grade are not made on certificates of registry. An applicant for a higher grade in the staff department shall apply in the same manner as for an original certificate of registry and shall surrender the certificate upon issuance of the new certificate of registry. A person holding a certificate of registry as staff officer may serve in a lower grade of a service for which he or she is registered.

(d) Staff officers who are members of the Naval Reserve Corps shall comply with Title 46 U.S.C. 8302 concerning uniforms.

(e) A duplicate certificate of registry may be issued by the Officer in Charge, Marine Inspection. (See § 10.219).

§ 10.807 Experience requirements for registry.

(a) The applicant for a certificate of registry as staff officer shall submit evidence of experience as follows:

(1) *Chief purser*. Two years of service aboard vessels performing duties relating to work in the purser's office.

(2) *Purser*. One year of service aboard vessels performing duties relating to work in the purser's office.

(3) *Senior assistant purser*. Six months of service aboard vessels performing duties relating to work in purser's office.

(4) *Junior assistant purser*. Previous experience not required.

(5) *Surgeon*. A valid license as physician and surgeon issued under the authority of a State or Territory of the United States, the Commonwealth of Puerto Rico, or the District of Columbia.

(6) *Professional nurse*. A valid license as a registered nurse issued under authority of a State or territory of the United States, the Commonwealth of Puerto Rico, or the District of Columbia.

(b) Employment on shore in connection with ship's business may be accepted in lieu of service aboard vessels. Related shore employment is accepted in the ratio of two months of shore service to count as one month of service aboard vessels.

(c) In computing the length of service required of an applicant for a certificate of registry, service of one season on vessels on the Great Lakes is counted as service of one year.

(d) In the event an applicant for a certificate of registry, other than surgeon, presents evidence of other qualifications which, in the opinion of the Officer in Charge, Marine

Inspection, are equivalent to the experience requirements of this section and are consistent with the duties of a staff officer, the Officer in Charge, Marine Inspection may issue the certificate of registry.

§10.809 Experience requirements for ratings endorsed on certificate of registry.

An applicant for rating to be endorsed on a certificate of registry shall submit evidence of experience as follows:

(a) *Marine physician assistant.* Successful completion of an accredited course of instruction for a physician's assistant program.

(b) *Hospital corpsman.* A rating of at least hospital corpsman or health services technician, first class in the U.S. Navy, U.S. Coast Guard, U.S. Marine Corps, or an equivalent rating in the U.S. Army (not less than staff sergeant, Medical Department, U.S.A.), or in the U.S. Air Force (not less than technical sergeant, Medical Department, U.S.A.F.), and a period of service of at least one month in a military hospital or U.S. Public Health Service Hospital.

15. Subpart 10.900 (§§ 10.901 through 10.950) is added to read as follows:

Subpart 10.900—License Examination Subjects

§10.901 General provisions.

(a) Applicants for the licenses listed in this subpart must pass an examination on the subjects listed prior to issuance of a license. For all deck and engineer licenses, except those issued for uninspected fishing industry vessels, the examination must be written. (See § 10.205(i)(1) for oral assisted examination requirements.) For the uninspected fishing industry vessel license, the examination may be administered orally if the applicant so requests.

(b) If the license is to be limited in a manner which would render any of the subject matter unnecessary or inappropriate, the examination may be amended accordingly by the Officer in Charge Marine Inspection. Limitations which may affect the examination content are:

(1) Restricted routes for reduced service licenses (master or mate of vessels of not more than 200 gross tons, operator of uninspected passenger vessels or uninspected towing vessels); or,

(2) Engineer licenses with horsepower restrictions.

(c) Examinations are required within each license category at entry and command levels with the exception of master of vessels of not more than 200 gross tons upon near coastal waters and

operator of uninspected towing vessels when the examination was taken at the entry level. Lateral crossovers to the left on either the deck or engineer license structures and all raises of grade with the exception of second mate and second assistant engineer require full examinations as indicated (See Figures 10.403 and 10.504). Progressions to the right on these charts require a partial examination in those situations which entail an increase in level of responsibility (i.e. third mate to master of any limited tonnage). The partial examination content shall be derived from a comparison of similar subjects as listed in this subpart.

§ 10.903 Licenses requiring examinations.

(a) The following licenses require examinations for issuance:

Master ocean any gross tons
Master near coastal any gross tons¹
Chief mate ocean any gross tons
Chief mate near coastal any gross tons¹
Third mate ocean any gross tons
Third mate near coastal any gross tons¹
Master ocean/near coastal not more than 500 or 1600 gross tons
Mate ocean/near coastal not more than 500 or 1600 gross tons
Mate ocean/near coastal not more than 200 gross tons
Master Great Lakes and inland any gross tons
Master Great Lakes and inland any gross tons
Master inland any gross tons
Master Great Lakes and inland not more than 1600 gross tons
Mate Great Lakes and inland not more than 1600 gross tons
Mate Great Lakes and inland not more than 200 gross tons
Pilot
Operator or 2/c operator uninspected towing vessels
Operator uninspected passenger vessels
Master uninspected fishing industry vessels
Mate uninspected fishing industry vessels
Chief engineer steam/motor vessels
First assistant engineer steam/motor vessels
Third assistant engineer steam/motor vessels
Designated duty engineer steam/motor vessels
Chief engineer uninspected fishing industry vessels
Assistant engineer uninspected fishing industry vessels

(b) The following licenses and certificate do not require examinations for issuance unless it is an original issuance, or a lateral crossover as explained in § 10.901(c):

Second mate ocean any gross tons
Second mate near coastal any gross tons
Master near coastal not more than 200 gross tons

¹ Examination will differ from oceans unlimited only by deleting those subjects inappropriate for this route.

Master inland not more than 200 gross tons
Second assistant engineer steam/motor vessels

§ 10.905 Examination reference information.

The examinations required under this subpart are based on international agreements, statutes, regulations, and standard reference materials. Applicants should be familiar with the content and use of the following, to the extent they relate to the particular license sought:

(a) International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS);

(b) Inland Navigational Rules;
(c) "Basic Principles to be Observed in Keeping a Navigational/Engineering Watch" (Regulation II/1 and III/1 of STC, 1978);

(d) International Medical Guide for Ships;

(e) Safety of Life at Sea, 1974 (SOLAS);

(f) Merchant Ship Search and Rescue Manual (MERSAR);

(g) International Code of Signals;

(h) International Regulations for Carriage of Goods;

(i) Titles 33, 46 and 49 of the Code of Federal Regulations;

(j) Light List;

(k) List of Lights;

(l) Radio Navigational Aids;

(m) Coast Pilot;

(n) Sailing Directions;

(o) Tide Tables;

(p) Tidal Current Tables;

(q) 1981 Nautical Almanac;

(r) Tables of Computed Altitude and Azimuth (Volume III)—Pub. 214;

(s) Sight Reduction Tables for Marine Navigation (Volume II)—Pub. 229;

(t) American Practical Navigator (Volume II)—Pub. 9; and

(u) CIM 16616.6 (old CG-388) Chemical Data Guide for Bulk Shipment by Water.

§ 10.907 Master of ocean (or near coastal) steam or motor vessels of any gross tons.

An applicant for a license as master of steam or motor vessels of any gross tons must pass an examination on the subjects listed in this section. Subjects marked with an asterisk (*) are not applicable to near coastal licenses.

(a) Navigation and position determination including:

(1) Ocean track plotting by:

* (i) Middle latitude sailing.

* (ii) Great circle sailing.

(iii) Mercator sailing.

(iv) ETA (estimated time of arrival).

* (v) Parallel sailing.

(2) Ice navigation.

(3) Restricted visibility navigation.

- (4) Extensive tidal effects.
- (5) Speed by RPM.
- (6) Fuel conservation.
- (7) Celestial observations including:
 - * (i) Latitude by Polaris.
 - (ii) Latitude by Meridian altitude.
 - (iii) Fix or running fix (any body).
 - * (iv) Star identification.
 - (v) Time of LAN (local apparent noon).
 - * (vi) Second estimate LAN (local apparent noon).
 - (vii) Zone time sunrise/sunset, moonrise/set.
 - (viii) Azimuth, any body.
 - * (ix) Amplitude, any body.
- (8) Nautical astronomy and navigation definitions.
- (9) Terrestrial observations including:
 - (i) Aids to navigation.
 - (ii) Charts, navigation publications, Notice to Mariners.
 - (iii) Piloting.
 - (10) Electronic navigation.
 - (11) Instruments and accessories.
 - (12) Change in draft due to density.
 - (b) Watchkeeping:
 - (1) COLREGS.
 - (2) Inland Navigational Rules.
 - (3) "Basic Principles to be Observed in Keeping a Navigational Watch".
 - (c) Radar equipment. See radar observer endorsements requirements (§ 10.480).
 - (d) Compass—magnetic and gyro:
 - (1) Principle of magnetic and gyro compasses.
 - (2) Gyro controlled systems.
 - (3) Operation and care of main gyro compass systems.
 - (e) Meteorology and oceanography:
 - (1) Synoptic chart weather forecasting.
 - (2) Characteristics of weather systems.
 - (3) Ocean current systems.
 - (4) Tide and tidal current publications.
 - (5) Tide and tidal current calculations.
 - (f) Ship stability, construction, and damage control:
 - (1) Principles of ship construction.
 - (2) Trim and stability.
 - (3) Damage trim and stability countermeasures.
 - (4) Stability, trim, and stress calculations.
 - (5) Vessel structural members.
 - (6) IMO ship stability recommendations.
 - (g) Maritime law:
 - (1) International maritime law:
 - (i) Certification and documentation of vessels required by international convention.
 - (ii) International convention on load lines.
 - (iii) SOLAS.
 - (iv) International convention on prevention of pollution from ships (MARPOL 73/78).

- (v) International health regulations.
- (vi) COLREG responsibility.
- (vii) International instructions for safety of ship, passengers, crew, cargo.
- (2) National maritime law:
 - (i) Certification and documentation of vessels.
 - (ii) Ship sanitation.
 - (iii) Rules and regulations for vessel inspection.
 - (iv) Pollution prevention regulations.
 - (v) Pilotage.
 - (h) Personnel management and training:
 - (1) Personnel management.
 - (2) Shipboard organization.
 - (3) Required crew training.
 - (i) Ship's business.
 - (j) Communications:
 - (1) Practical signaling examination (flashing light).
 - (k) Search and rescue:
 - (1) IMO merchant ship search and rescue manual (MERSAR).

§ 10.909 Chief mate of ocean (or near coastal) steam or motor vessels of any gross tons.

An applicant for a license as chief mate of steam or motor vessels of any gross tons must pass an examination on the subject listed in this section. Subjects marked with an asterisk (*) are not applicable to near coastal licenses.

- (a) Navigation and position determination including:
 - (1) Ocean Track Plotting by:
 - * (i) Middle latitude sailing.
 - (ii) Mercator sailing.
 - * (iii) Great circle sailing.
 - (iv) ETA (Estimated Time of Arrival).
 - * (v) Parallel sailing.
 - (vi) Dead reckoning.
 - (vii) Chart navigation.
 - (2) Restricted waters navigation:
 - (i) Piloting.
 - (ii) Chart navigation.
 - (3) Ice navigation.
 - (4) Restricted visibility navigation.
 - (5) Extensive tidal effects.
 - (6) Speed by RPM.
 - (7) Fuel conservation.
 - (8) Celestial observations including:
 - * (i) Latitude by Polaris.
 - * (ii) Latitude by Meridian altitude.
 - (iii) Fix or running fix (any body).
 - * (iv) Star identification.
 - (v) Time of LAN (local apparent noon).
 - * (vi) Second estimate LAN (local apparent noon).
 - * (vii) Zone time sunrise/set, moonrise/set.
 - (viii) Nautical astronomy and navigation definitions.
 - (ix) Azimuth, any body.
 - (x) Amplitude, any body.
 - (9) Terrestrial observations including:
 - (i) Aids to navigation.

- (ii) Charts, navigation publications, Notice to Mariners.
- (iii) Piloting.
- (iv) Distance off.
- (v) Bearing problems.
- (vi) Fix or running fix.
- (10) Electronic navigation.
- (11) Instruments and accessories.
- (12) Change in draft due to density.
- (b) Watchkeeping:
 - (1) COLREGS.
 - (2) Inland Navigational Rules.
 - (3) "Basic Principles to be Observed in Keeping a Navigational Watch".
 - (c) Radar equipment. See radar observer endorsement requirements (§ 10.480).
 - (d) Compass—magnetic and gyro:
 - (1) Principles of magnetic and gyro compasses.
 - (2) Magnetic and gyro compass error, correction and compensation including:
 - (i) Deviation (any body).
 - (ii) Azimuth (any body).
 - * (iii) Amplitude of the sun.
 - (iv) Deviation table construction.
 - (3) Gyro controlled systems.
 - (4) Operation and care of main gyro compass systems.
 - (e) Meteorology and oceanography:
 - (1) Synoptic chart weather forecasting.
 - (2) Characteristics of weather systems.
 - (3) Ocean current systems.
 - (4) Tide and tidal current publications.
 - (5) Tide and tidal current calculations.
 - (f) Ship maneuvering and handling:
 - (1) Approaching pilot vessel or station.
 - (2) Shiphandling in rivers, estuaries.
 - (3) Maneuvering in shallow water.
 - (4) Interaction with bank or passing ship.
 - (5) Berthing and unberthing.
 - (6) Anchoring and mooring.
 - (7) Dragging, clearing fouled anchors.
 - (8) Drydocking, with and without prior damage.
 - (9) Heavy weather operation, including ship/aircraft in distress, towing.
 - (10) Maneuvering for launching lifeboats and liferafts in heavy weather.
 - (11) Receiving survivors from lifeboats and liferafts.
 - (12) Determining ship maneuvering characteristics of major vessel types.
 - (13) Wake reduction.
 - (14) Ice operations.
 - (15) Traffic separation schemes.
 - (16) Towing operations.
 - (g) Ship stability, construction, and damage control:
 - (1) Principles of ship construction.
 - (2) Trim and stability.
 - (3) Damage trim and stability, counter measures.

- (4) Stability, trim, and stress calculations.
- (5) Vessel structural members.
- (6) IMO ship stability recommendations.
- (h) Ship power plants:
 - (1) Marine power plant operating principles.
- (2) Ships' auxiliary machinery.
- (3) Marine engineering terms.
 - (i) Cargo handling and stowage:
 - (1) Cargo stowage and securing, including cargo gear.
 - (2) Loading and discharge operations.
- (3) International regulations (IMDG) for carriage of cargoes.
 - (4) Dangerous goods precautions.
 - (5) Tank vessel safety guide.
 - (6) Cargo piping and pumping systems.
 - (7) Cargo oil terms and definitions.
 - (8) Pollution regulations.
 - (9) Ballasting, tank cleaning, and gas freeing operations.
 - (10) Load on top procedures.
- (j) Fire prevention and firefighting appliances:
 - (1) Organization of fire drills.
 - (2) Classes and chemistry of fire.
 - (3) Firefighting systems.
 - (4) Firefighting equipment and regulations.
- (5) Basic firefighting and prevention of fires.
 - (k) Emergency procedures:
 - (1) Ship beaching precautions.
 - (2) Actions prior to and after grounding.
 - (3) Refloating a grounded ship.
 - (4) Collision.
 - (5) Temporary repairs.
 - (6) Passenger and crew safety in emergency.
 - (7) Fire or explosion.
 - (8) Abandon ship.
 - (9) Emergency steering.
 - (10) Rescuing survivors from ships or aircraft in distress.
 - (11) Man overboard.
 - (l) Medical care:
 - (1) Knowledge and use of:
 - (i) International Medical Guide for Ships.
 - (ii) Ships Medicine Chest and Medical Aid at Sea.
 - (iii) Medical section, International Code of Signals.
 - (iv) Medical first aid guide for use in accidents involving dangerous goods.
 - (v) First aid.
 - (m) Maritime law:
 - (1) International maritime law:
 - (i) Certification and documentation of vessels required by international conventions.
 - (ii) International conventions on load lines.
 - (iii) SOLAS.
 - (iv) International Convention on Prevention of Pollution from Ships (MARPOL 73/78).

- *(v) International health regulations.
 - (vi) COLREG responsibilities.
 - *(vii) International instructions for safety of ship, passengers, crew, cargo.
 - (2) National maritime law:
 - (i) Certification and documentation of vessels.
 - (ii) Ship sanitation.
 - (iii) Rules and regulations for vessel inspection.
 - (iv) Pollution prevention regulations.
 - (v) Pilotage.
 - (n) Personnel management and training:
 - (1) Personnel management.
 - (2) Shipboard organization.
 - (3) Required crew training.
 - (o) Ship's business.
 - (p) Communications:
 - (1) Practical signaling examination (flashing light).
 - (2) Radiotelephone communications.
 - (3) Radiotelegraphy emergency distress signals.
 - (4) Signals: storm, wreck, distress, and special.
 - (q) Lifesaving:
 - (1) Lifesaving appliance regulations.
 - (2) Lifesaving appliance operation.
 - (r) Search and Rescue:
 - (1) IMO merchant ship search and rescue manual (MERSAR).
 - (s) Demonstration of proficiency:
 - (1) Navigation:
 - (i) Sextant, pelorus, azimuth mirror.
 - (ii) Practical chart work.
 - (2) Radar:
 - (i) Simulator or maneuvering boards.
 - (3) Firefighting:
 - (i) Attendance at approved firefighting course.
 - (4) Lifesaving:
 - (i) Launching and handling of lifeboats, liferafts and other lifesaving appliances.
- § 10.911 Master of ocean (or near coastal) steam or motor vessels of not more than 500 or 1600 gross tons.**
- An applicant for a license as master of ocean or near coastal steam or motor vessels of not more than 500 or 1600 gross tons must pass an examination on the subjects listed in this section. Subject marked with an asterisk (*) are not applicable to near coastal licenses.
- (a) Navigation and position determination including:
 - (1) Ocean track plotting by:
 - (i) Dead reckoning.
 - (ii) Chart navigation.
 - (iii) Estimated time of arrival (ETA).
 - (2) Restricted waters:
 - (i) Piloting.
 - (ii) Chart navigation.
 - (3) Ice navigation.
 - (4) Restricted visibility navigation.
 - (5) Traffic separation schemes.
 - (6) Celestial observations including:

- [illegible]

- (15) Towing operations.
- (g) Ship stability, construction, and damage control:
 - (1) Principles of ship construction.
 - (2) Trim and stability.
 - (3) Damage trim and stability and counter measures.
 - (4) Stability, trim, and stress calculations.
 - (5) Vessel structural members.
 - (h) Ship power plants:
 - (1) Marine power plant operating principles.
 - (2) Ship's auxiliary machinery.
 - (3) Marine engineering terms.
 - (i) Cargo handling and stowage:
 - (1) Cargo stowage and securing, including cargo gear.
 - (2) Loading and discharge operations.
 - (3) Dangerous goods precautions.
 - (4) Tank vessel safety guide.
 - (5) Cargo piping and pumping systems.
 - (6) Cargo oil terms and definitions.
 - (7) Pollution regulations.
 - (8) Ballasting, tank cleaning, and gas freeing operations.
 - (9) Load on top procedures.
 - (j) Fire prevention and firefighting appliances:
 - (1) Organization of fire drills.
 - (2) Classes and chemistry of fire.
 - (3) Firefighting systems.
 - (4) Firefighting equipment and regulations.
 - (5) Basic firefighting and prevention.
 - (k) Emergency procedures:
 - (1) Ship beaching precautions.
 - (2) Actions prior to and after grounding.
 - (3) Refloating a grounded ship.
 - (4) Collision.
 - (5) Temporary repairs.
 - (6) Passenger and crew safety in emergency.
 - (7) Fire or explosion.
 - (8) Abandon ship.
 - (9) Emergency steering.
 - (10) Rescuing survivors from ships in distress.
 - (11) Man overboard.
 - (l) Medical care:
 - (1) Knowledge and use of:
 - (i) International Medical Guide for Ships.
 - (ii) Ships Medicine Chest and Medical Aid at Sea.
 - (iii) Medical section, International Code of Signals.
 - (iv) Medical first aid guide for use in accidents involving dangerous goods.
 - (v) First aid.
 - (m) Maritime law:
 - (1) International Maritime law:
 - (i) Certification and documentation of vessels required by international conventions.
 - (ii) International conventions on load lines.
 - (iii) SOLAS.

- (iv) International Convention on Prevention of Pollution from Ships (MARPOL 73/78).
 - (v) COLREG responsibilities.
 - (2) National maritime law:
 - (i) Certification and documentation of vessels.
 - (ii) Ship sanitation.
 - (iii) Rules and regulations for vessel inspection.
 - (iv) Pollution prevention regulations.
 - (v) Pilotage.
 - (vi) COLREG responsibilities.
 - (n) Personnel management and training:
 - (1) Personnel management.
 - (2) Shipboard organization.
 - (3) Required crew training.
 - (o) Ships business.
 - (p) Communications.
 - (1) Practical signaling examination (flashing light).
 - (2) Radiotelephone communications.
 - (3) Radiotelegraphy emergency distress signals.
 - (4) Signals: storm, wreck, distress, and special.
 - (q) Lifesaving:
 - (1) Lifesaving appliance regulations.
 - (2) Lifesaving appliance operation.
 - (r) Demonstration of proficiency:
 - (1) Navigation:
 - (i) Pelorus and azimuth mirror.
 - (ii) Practical chart work.
 - (2) Radar:
 - (i) Simulator or maneuvering boards.
 - (3) Firefighting
 - (i) Attendance at approved firefighting course.
 - (4) Lifesaving:
 - (i) Launching and handling of lifeboats, liferafts and other lifesaving appliances.
- § 10.913 Third mate of ocean (or near coastal) steam or motor vessels of any gross tons.**
- An applicant for a license as third mate of ocean (or near coastal) steam or motor vessels of any gross tons must pass an examination on the subjects listed in this section. Subjects marked with an asterisk (*) are not applicable to near coastal licenses.
- (a) Navigation and position determination:
 - (1) Ocean track plotting:
 - * (i) Middle latitude sailing.
 - * (ii) Mercator sailing.
 - * (iii) Great circle sailing.
 - (iv) ETA (Estimated Time of Arrival).
 - * (v) Parallel sailing.
 - (vi) Dead reckoning.
 - (vii) chart navigation.
 - (2) Restricted waters:
 - (i) Piloting.
 - (ii) Chart navigation.
 - (3) Celestial observations:
 - * (i) Latitude by Polaris.

- * (ii) Latitude by meridian altitude.
- (iii) Fix or running fix (any body).
- * (iv) Star identification.
- (v) Time of LAN (local apparent noon).
- * (vi) Second estimate LAN (local apparent noon).
- * (vii) Zone time sunrise or sunset, moonrise or moonset.
- (viii) Nautical astronomy & navigation definitions.
- (4) Terrestrial observations including:
 - (i) Aids to navigation.
 - (ii) Charts, navigation publications, Notice to Mariners.
 - (iii) Piloting.
 - (iv) Distance off.
 - (v) Bearing problems.
 - (vi) Fix or running fix.
 - (5) Electronic navigation.
 - (6) Instruments and accessories.
 - (7) Speed by RPM.
 - (8) Basic seamanship.
 - (b) Watchkeeping.
 - (1) COLREGS.
 - (2) Inland Navigational Rules.
 - (3) "Basic Principles to be Observed in Keeping a Navigational Watch".
 - (c) Radar equipment. See radar observer endorsement requirements (§ 10.480).
 - (d) Compass—magnetic and gyro:
 - (1) Principles of magnetic and gyro compasses.
 - (2) Magnetic and gyro compass error, correction, and compensation:
 - * (i) Deviation (any body).
 - * (ii) Azimuth (any body).
 - * (iii) Amplitude sun.
 - (iv) Deviation table construction.
 - (3) Gyro controlled systems.
 - (4) Operation and care of main gyro compass systems.
 - (e) Meteorology and oceanography:
 - (1) Synoptic chart weather forecasting.
 - (2) Characteristics of weather systems.
 - * (3) Ocean current systems.
 - (4) Tide and tidal current publications.
 - (5) Tide and tidal current calculations.
 - (f) Ship maneuvering and handling:
 - (1) Approaching pilot vessel or station.
 - (2) Shiphandling in rivers, estuaries.
 - (3) Manuevering in shallow water.
 - (4) Interaction with bank or passing ship.
 - (5) Anchoring and mooring.
 - (6) Dragging, clearing fouled anchors.
 - (7) Determining ship maneuvering characteristics of major vessel types.
 - (8) Traffic separation schemes.
 - (g) Ship stability, construction, and damage control:
 - (1) Damage trim and stability and counter measures.

- (2) Stability, trim and stress calculations.
- (3) Vessel structural members.
- (h) Cargo handling and stowage:
 - (1) Cargo stowage and securing, including cargo gear.
 - (2) Loading and discharge operations.
 - (3) Dangerous goods precautions.
 - (4) Tank vessel safety guide.
 - (5) Cargo piping and pumping systems.
 - (6) Cargo oil terms and definitions.
 - (7) Pollution regulations.
 - (8) Ballasting, tank cleaning, and gas freeing operations.
 - (9) Load on top procedures.
 - (i) Fire prevention and firefighting appliances:
 - (1) Organization of fire drills.
 - (2) Classes and chemistry of fire.
 - (3) Firefighting systems.
 - (4) Firefighting equipment and regulations.
 - (5) Basic firefighting and prevention.
 - (j) Emergency procedures:
 - (1) Ship beaching precautions.
 - (2) Actions prior to and after grounding.
 - (3) Refloating a grounded ship.
 - (4) Collision.
 - (5) Temporary repairs.
 - (6) Passenger and crew safety in emergency.
 - (7) Fire and explosion.
 - (8) Abandon ship.
 - (9) Emergency steering.
 - (10) Rescuing survivors from ships in distress.
 - (11) Man overboard.
 - (k) Medical care:
 - (1) Knowledge and use of:
 - (i) Ships Medicine Chest and Medical Aid at Sea.
 - (ii) Medical first aid guide for use in accidents involving dangerous goods.
 - (iii) First aid.
 - (l) Communications:
 - (1) Practical signaling examination (flashing light).
 - (2) Radiotelephone communications.
 - (3) Radiotelegraphy emergency distress signals.
 - (4) Signals: storm, wreck, distress, and special.
 - (m) Lifesaving:
 - (1) Lifesaving appliance regulations.
 - (2) Lifesaving appliance operation.
 - (n) Demonstration of proficiency:
 - (1) Navigation:
 - (i) Sextant, pelorus, azimuth mirror.
 - (ii) Practical chart work.
 - (2) Radar:
 - (i) Simulator or maneuvering boards.
 - (3) Firefighting:
 - (i) Attendance at approved firefighting course.
 - (4) Lifesaving:
 - (i) Launching and handling of lifeboats and liferafts and other lifesaving appliances.

§ 10.915 Mate of ocean (or near coastal) steam or motor vessels of not more than 500 to 1600 gross tons.

An applicant for a license as mate of ocean or near coastal steam or motor vessels of not more than 500 or 1600 gross tons must pass an examination on the subjects listed in this section. Subjects marked with an asterisk (*) are not applicable to near coastal licenses.

(a) Navigation and position determination:

- (1) Ocean track plotting:
 - (i) Dead reckoning.
 - (ii) Chart navigation.
 - (iii) Estimated time of arrival (ETA).
- (2) Restricted waters:
 - (i) Piloting.
 - (ii) Chart navigation.
 - (3) Celestial observations including:
 - (i) Fix or running fix (any body).
 - (ii) Star identification.
 - (iii) Latitude by Polaris.
 - (iv) Latitude by meridian altitude.
 - (v) Time of LAN (local apparent noon).
 - (vi) Zone time sunrise/sunset.
 - (vii) Azimuth, any body.
 - (viii) Amplitude, any body.
 - (4) Terrestrial observations:
 - (i) Aids to navigation.
 - (ii) Charts, navigation publications, Notice to Mariners.
 - (iii) Piloting.
 - (iv) Distance off.
 - (v) Bearing problems.
 - (vi) Fix or running fix.
 - (4) Instruments and accessories.
 - (5) Electronic navigation gear.
 - (6) Basic seamanship.
 - (b) Watchkeeping:
 - (1) COLREGS.
 - (2) Inland Navigational Rules.
 - (3) "Basic Principles to be Observed in Keeping a Navigational Watch".
 - (c) Radar equipment.
 - See radar observer endorsement requirements (§10.480).
 - (d) Compass-magnetic and gyro:
 - (1) Principles of magnetic and gyro compasses.
 - (2) Magnetic/gyro compass error, and correction.
 - (3) Gyro controlled systems.
 - (4) Operation and care of main gyro compass systems.
 - (e) Meteorology and oceanography:
 - (1) Synoptic chart weather forecasting.
 - (2) Characteristics of weather systems.
 - (3) Tide and tidal current publications.
 - (4) Tide and tidal current calculations.
 - (f) Ship maneuvering and handling:
 - (1) Approaching pilot vessel or station.
 - (2) Shiphandling in rivers, estuaries.
 - (3) Maneuvering in shallow water.
 - (4) Interaction with bank or passing ship.

- (5) Anchoring and mooring.
- (6) Dragging, clearing fouled anchors.
- (7) Traffic separation schemes.
- (8) Towing operations.
- (g) Ship stability, construction, and damage control:
 - (1) Damage trim, stability and counter measures.
 - (2) Stability, trim, and stress calculations.
 - (3) Vessel structural members.
 - (h) Cargo handling and stowage:
 - (1) Cargo stowage and securing, including cargo gear.
 - (2) Loading and discharge operations.
 - (3) Dangerous goods precautions.
 - (4) Tank vessel safety guide.
 - (5) Cargo piping and pumping systems.
 - (6) Cargo oil terms and definitions.
 - (7) Pollution regulations.
 - (8) Ballasting, tank cleaning, and gas freeing operations.
 - (9) Load on top procedures.
 - (i) Fire prevention and firefighting appliances:
 - (1) Organization of fire drills.
 - (2) Classes and chemistry of fire.
 - (3) Firefighting systems.
 - (4) Firefighting equipment and regulations.
 - (5) Basic firefighting and prevention.
 - (j) Emergency procedures:
 - (1) Ship beaching precautions.
 - (2) Actions prior to and after grounding.
 - (3) Refloating a grounded ship.
 - (4) Collision.
 - (5) Temporary repairs.
 - (6) Passenger and crew safety in emergency.
 - (7) Fire and explosion.
 - (8) Abandon ship.
 - (9) Emergency steering.
 - (10) Rescuing survivors from ships in distress.
 - (11) Man overboard.
 - (k) Medical care:
 - (1) Knowledge and use of:
 - (i) Ships Medicine Chest and Medical Aid at Sea.
 - (ii) Medical first aid guide for use in accidents involving dangerous goods.
 - (iii) First aid.
 - (l) Communications:
 - (1) Practical signaling examination (flashing light).
 - (2) Radiotelephone communications.
 - (3) Radiotelegraphy emergency distress signals.
 - (4) Signals: storm, wreck, distress, and special.
 - (m) Lifesaving:
 - (1) Lifesaving appliance regulations.
 - (2) Lifesaving appliance operation.
 - (n) Demonstration of proficiency:
 - (1) Navigation:
 - (i) Pelorus, azimuth mirror.
 - (ii) Practical chart work.

(2) Radar:

(i) Simulator or maneuvering boards.

(3) Firefighting:

(i) Attendance at approved firefighting course.

(4) Lifesaving:

(i) Launching and handling of lifeboats, liferafts and other lifesaving appliances.

§ 10.917 Mate (and operator of uninspected passenger vessels) of ocean or near coastal vessels of not more than 200 gross tons.

An applicant for a license as mate of near coastal vessels of not more than 200 gross tons must pass an examination on the subjects listed in this section except paragraphs (p) and (q) of this section. An applicant for a license as master or mate on ocean waters, must, in addition pass an examination on the subjects listed in paragraph (q) of this section. An applicant for license as operator of uninspected passenger vessels on near coastal waters must pass the same examination, except those topics marked with an asterisk (*). An applicant for a sail or auxiliary sail license must also pass an examination on the subjects listed in paragraph (p) of this section.

(a) Navigation and position determination:

(1) Ocean track plotting:

(i) Dead reckoning.

(ii) Chart navigation.

(2) Restricted waters:

(i) Piloting.

(ii) Chart navigation.

(3) Instruments and accessories.

(4) Terrestrial observations:

(i) Aids to navigation.

(ii) Charts, navigation publications, Notice to Mariners.

(iii) Piloting.

(iv) Distance off.

(v) Bearing problems.

(vi) Fix or running fix.

(5) Electronic navigation gear.

(6) Basic seamanship.

(b) Watchkeeping:

(1) COLREGS.

(2) Inland Navigational Rules.

* (3) "Basic Principles to be Observed in Keeping a Navigational Watch".

(c) Compass-magnetic and gyro (magnetic only for operator of uninspected passenger vessels).

(1) Principles of magnetic and gyro compasses.

(2) Magnetic and gyro compass error, and correction.

(d) Meteorology and oceanography:

(1) Synoptic chart weather forecasting.

(2) Characteristics of weather systems.

(3) Tide and tidal current publications.

(4) Tide and tidal current calculations.

(e) Ship maneuvering and handling:

(1) Shiphandling in rivers, estuaries.

(2) Maneuvering in shallow water.

(3) Interaction with bank or passing ship.

(4) Berthing and unberthing.

(5) Anchoring and mooring.

(6) Heavy weather operations.

including ship or aircraft in distress, towing.

(7) Towing operations.

* (8) Maneuvering for launching lifeboats and liferafts in heavy weather.

* (9) Receiving survivors from lifeboats and liferafts.

(10) Traffic separation schemes.

* (f) Ship stability, construction, and damage control:

(1) Trim and stability.

(g) Ship power plants:

(1) Small engine operation and maintenance.

(h) Cargo handling and stowage:

* (1) Cargo stowage and securing, including cargo gear.

* (2) Dangerous goods precautions.

(3) Pollution regulations.

* (4) Ballasting, tank cleaning and gas freeing operations.

(i) Fire prevention and firefighting appliances:

* (1) Organization of fire drills.

(2) Classes and chemistry of fire.

* (3) Firefighting systems.

(4) Firefighting equipment and regulations.

(5) Basic firefighting and prevention.

(j) Emergency procedures:

(1) Collision.

(2) Temporary repairs.

(3) Passenger and crew safety in emergency.

(4) Fire or explosion.

(5) Rescuing survivors from ships in distress.

(6) Man overboard.

(7) Abandon ship.

(k) Medical care:

(1) Knowledge and use of first aid.

(l) Maritime Law:

(1) International maritime law:

(i) Certification and documentation of vessels required by international conventions.

(ii) International conventions on load lines.

(iii) SOLAS.

(iv) International Convention on Prevention of Pollution from Ships (MARPOL 73/78).

(v) COLREG responsibilities.

(2) National maritime law:

* (i) Certification and documentation of vessels.

(ii) Ship sanitation.

* (iii) Rules and regulations for vessel inspection.

(iv) Pollution prevention regulations.

* (v) Pilotage.

(vi) Rules and regulations for uninspected vessels.

(m) Communications:

* (1) Practical signaling examination (flashing light for service on vessels of over 150 gross tons in offshore service).

* (2) Radiotelephone communications.

* (3) Radiotelegraphy emergency distress signals.

(4) Signals: storm, wreck, distress, and special.

(n) Lifesaving:

(1) Lifesaving appliance regulations.

(2) Lifesaving appliance operation.

(o) Demonstration of proficiency:

(1) Navigation:

(i) Practical chart work.

(p) Sail/aux. sail:

(1) Sailing terminology.

(2) Sail vessel safety precautions.

(3) Sail vessel rules of the road.

(4) Sail vessel heavy weather precautions and procedures.

(5) Sail vessel operation.

(6) Sail vessel navigation and maneuvering.

(q) Celestial observations including:

(1) Fix or running fix, any body.

(2) Star identification.

(3) Latitude by Polaris.

(4) Latitude by meridian altitude.

(5) Time of LAN (local apparent noon).

(6) Zone time sunrise/sunset.

(7) Azimuth, any body.

(8) Amplitude, any body.

§ 10.919 Second class operator uninspected towing vessels upon near coastal/inland/western river routes.

An applicant for an original license as second class operator of uninspected towing vessels must pass an examination on the subjects listed in this section. All subjects apply to licenses for near coastal, western rivers, and inland routes except as noted.

(a) Navigation and position determination:

(1) Ocean track plotting (near coastal only):

(i) Dead reckoning.

(ii) Chart navigation.

(2) Restricted waters:

(i) Piloting.

(ii) Chart navigation.

(3) Terrestrial observations:

(i) Aids to navigation.

(ii) Charts, navigation publications.

Coast Pilot, Notice to Mariners.

(iii) Piloting.

(iv) Distance off.

(v) Bearing problems (not required for western rivers).

(vi) Fix or running fix (not required for western rivers).

(4) Electronic navigation.

(5) Instruments and accessories.

- (6) Basic seamanship.
- (b) Watchkeeping:
 - (1) COLREGS (near coastal only).
 - (2) Inland Navigational Rules.
 - (3) "Basic Principles to be Observed in Keeping a Navigational Watch".
- (c) Compass-magnetic and gyro (gyro compass not required for western rivers):
 - (1) Principles of magnetic and gyro compasses.
 - (2) Magnetic and gyro compass error and correction.
 - (d) Meteorology and oceanography:
 - (1) Synoptic chart weather forecasting.
 - (2) Characteristics of weather systems.
 - (3) Tide and tidal current publications.
 - (4) Tide and tidal current calculations (near coastal only).
 - (e) Ship maneuvering and handling:
 - (1) Shiphandling in rivers, estuaries.
 - (2) Maneuvering in shallow water.
 - (3) Interaction with bank or passing ship.
 - (4) Berthing and unberthing.
 - (5) Anchoring and mooring.
 - (6) Maneuvering for launching lifeboats and liferafts in heavy weather (near coastal only).
 - (7) Receiving survivors from lifeboats and liferafts.
 - (8) Ice operations.
 - (9) Traffic separation schemes (near coastal only).
 - (10) Towing operations.
 - (f) Ship power plants:
 - (1) Small engine operations and maintenance.
 - (g) Ship stability, construction, and damage control:
 - (1) Basic principles of stability, cargo handling and stowage.
 - (h) Fire prevention and firefighting appliances:
 - (1) Organization of fire drills.
 - (2) Classes and chemistry of fire.
 - (3) Firefighting systems.
 - (4) Firefighting equipment and regulations.
 - (5) Basic firefighting and prevention.
 - (i) Emergency procedures:
 - (1) Collision.
 - (2) Temporary repairs.
 - (3) Passenger and crew safety in emergency.
 - (4) Fire or explosion.
 - (5) Rescuing survivors from ships in distress.
 - (6) Man overboard.
 - (7) Abandon ship.
 - (j) Medical care:
 - (1) Knowledge and use of first aid.
 - (k) Maritime Law:
 - (1) National maritime law.
 - (i) Certification and documentation of vessels.
 - (ii) Ship sanitation.

- (iii) Pollution prevention regulations.
- (iv) Rules and regulations for uninspected vessel.
 - (1) Communications:
 - (1) Radiotelephone communications.
 - (2) Signals: storm, wreck, distress, and special.
 - (m) Lifesaving:
 - (1) Lifesaving appliance regulations.
 - (2) Lifesaving appliance operation.
 - (n) Demonstration of proficiency:
 - (1) Navigation:
 - (i) Practical chart work.

§ 10.921 Master of Great Lakes and inland or master of inland steam or motor vessels of any gross tons.

An applicant for a license as master of Great Lakes and inland or master of inland steam or motor vessels of any gross tons must pass an examination on the subjects listed in this section.

- (a) Navigation and position determination:
 - (1) Restricted waters:
 - (i) Piloting.
 - (ii) Chart navigation.
 - (2) Terrestrial observations:
 - (i) Aids to navigation.
 - (ii) Charts, navigational publications, Notice to Mariners.
 - (iii) Piloting.
 - (iv) Distance off.
 - (v) Fix or running fix.
 - (3) Instruments and accessories.
 - (4) Basic seamanship.
 - (5) Electronic navigation.
- (b) Watchkeeping:
 - (1) Inland Navigational Rules.
 - (2) "Basic Principles to be Observed in Keeping a Navigational Watch".
- (c) Radar equipment:
 - See radar observer endorsement requirements (§ 10.480).
- (d) Compass-magnetic and gyro:
 - (1) Principles of magnetic and gyro compasses.
 - (2) Magnetic and gyro compass error, correction, and compensation.
- (e) Meteorology and oceanography:
 - (1) Synoptic chart weather forecasting.
 - (2) Characteristics of weather systems.
 - (3) Tide and tidal current publications.
 - (4) Tide and tidal current calculations.
 - (f) Ship maneuvering and handling:
 - (1) Shiphandling in rivers, estuaries.
 - (2) Maneuvering in shallow water.
 - (3) Interaction with bank or passing ship.
 - (4) Berthing and unberthing.
 - (5) Anchoring and mooring.
 - (6) Dragging, clearing fouled anchors.
 - (7) Maneuvering for launching lifeboats and liferafts in bad weather.
 - (8) Wake reduction.
 - (9) Ice operations.
 - (g) Ship stability, construction, and damage control:

- (1) Principles of ship construction.
- (2) Trim and stability.
- (h) Ship power plants:
 - (1) Marine power plant operating principles.
 - (2) Ships' auxiliary machinery.
 - (3) Marine engineering terms.
 - (4) Small engine operating and maintenance.
 - (i) Cargo handling and stowage:
 - (1) Cargo stowage and securing, including cargo gear.
 - (2) Loading and discharge operations.
 - (3) Dangerous goods precautions.
 - (4) Pollution regulations.
 - (j) Fire prevention and firefighting appliances:
 - (1) Organization of fire drills.
 - (2) Classes and chemistry of fire.
 - (3) Firefighting systems.
 - (4) Firefighting equipment and regulations.
 - (5) Basic firefighting and prevention.
 - (k) Emergency procedures:
 - (1) Ship beaching precautions.
 - (2) Actions prior to and after grounding.
 - (3) Refloating a grounded ship.
 - (4) Collision.
 - (5) Temporary repairs.
 - (6) Passenger and crew safety in emergency.
 - (7) Fire or explosion.
 - (8) Abandon ship.
 - (9) Emergency steering.
 - (10) Rescuing survivors from ships in distress.
 - (11) Man overboard.
 - (l) Medical care:
 - (1) Knowledge and use of first aid.
 - (m) Maritime law:
 - (1) National maritime law:
 - (i) Certification and documentation of vessels.
 - (ii) Ship sanitation.
 - (iii) Rules and regulations for vessel inspection.
 - (iv) Pollution prevention regulations.
 - (v) Pilotage.
 - (n) Personnel management and training:
 - (1) Personnel management.
 - (2) Shipboard organization.
 - (3) Required crew training.
 - (o) Communications:
 - (1) Radiotelephone communications.
 - (2) Signals: storm, wreck, distress, and special.
 - (p) Lifesaving:
 - (1) Lifesaving appliance regulations.
 - (2) Lifesaving appliance operation.
 - (q) Demonstration of proficiency:
 - (1) Navigation:
 - (i) Practical chart work.
 - (2) Radar.
 - (i) Simulator or maneuvering board.

§ 10.923 Mate of Great Lakes and inland steam or motor vessels of any gross tons.

An applicant for a license as mate of Great Lakes and inland steam or motor vessels of any gross tons must pass an examination on the subject listed in this section.

(a) Navigation and position determination:

- (1) Restricted waters:
 - (i) Piloting.
 - (ii) Chart navigation.
- (2) Terrestrial observations:
 - (i) Aids to navigation.
 - (ii) Charts, navigation publications, Notice to Mariners.
 - (iii) Piloting.
 - (iv) Distance off.
 - (v) Fix or running fix.
 - (vi) Bearing problems.
- (3) Instruments and accessories.
- (4) Basic seamanship.
- (5) Electronic navigation.
- (b) Watchkeeping:
 - (1) Inland Navigational Rules.
 - (2) "Basic Principles to be Observed in Keeping a Navigational Watch".
- (c) Radar equipment:

See radar observer endorsement requirements (section 10.480).
- (d) Compass-magnetic and gyro:
 - (1) Principles of magnetic and gyro compasses.
 - (2) Magnetic and gyro compass error, correction, and compensation.
- (3) Meteorology and oceanography:
 - (1) Synoptic chart weather forecasting.
 - (2) Characteristics of weather systems.
- (3) Tide and tidal current publications.
- (4) Tide and tidal current calculations.
- (f) Ship maneuvering and handling:
 - (1) Shiphandling in rivers, estuaries.
 - (2) Maneuvering in shallow water.
 - (3) Interaction with bank or passing ship.
- (4) Berthing and unberthing.
- (5) Anchoring and mooring.
- (6) Dragging, clearing fouled anchors.
- (7) Wake reduction.
- (g) Cargo handling and stowage:
 - (1) Cargo stowage and securing, including cargo gear.
 - (2) Pollution regulations.
 - (h) Fire prevention and firefighting appliances:
 - (1) Organizations of fire drills.
 - (2) Classes and chemistry of fire.
 - (3) Firefighting systems.
 - (4) Firefighting equipment and regulations.
 - (5) Basic firefighting and prevention.
 - (i) Emergency procedures:
 - (1) Collision.
 - (2) Temporary repairs.
 - (3) Passenger and crew safety in emergency.
 - (4) Fire and explosion.

- (5) Emergency steering.
- (j) Medical care:
 - (1) Knowledge and use of first aid.
- (k) Maritime law:
 - (1) National maritime law:
 - (i) Ship sanitation.
 - (ii) Rules and regulations for vessel inspection.
 - (l) Communications:
 - (1) Radiotelephone communications.
 - (2) Signals: storm, wreck, distress, and special.
 - (m) Lifesaving:
 - (1) Lifesaving appliance operation.
 - (n) Demonstration of proficiency:
 - (1) Navigation:
 - (i) Practical chart work.

§ 10.925 Master of Great Lakes and inland steam or motor vessels of not more than 1600 gross tons.

An applicant for a license as master of Great Lakes and inland steam or motor vessels of not more than 1600 gross tons must pass an examination on the subjects listed in this section.

(a) Navigation and position determination:

- (1) Restricted waters:
 - (i) Piloting.
 - (ii) Chart navigation.
- (2) Terrestrial observations:
 - (i) Aids to navigation.
 - (ii) Charts, navigation publications, Notice to Mariners.
 - (iii) Piloting.
 - (iv) Distance off.
 - (v) Fix or running fix.
 - (vi) Bearing problems.
- (3) Instruments and accessories.
- (4) Basic seamanship.
- (b) Watchkeeping:
 - (1) Inland Navigational Rules.
 - (2) "Basic Principles to be Observed in Keeping a Navigational Watch".
- (c) Radar equipment:

See radar observer endorsement requirements (section 10.480).
- (d) Compass—magnetic and gyro:
 - (1) Principles of magnetic and gyro compasses.
 - (2) Magnetic and gyro compass error and correction.
- (e) Meteorology and oceanography:
 - (1) Synoptic chart weather forecasting.
 - (2) Characteristics of weather systems.
- (3) Tide and tidal current publications.
- (4) Tide and tidal current calculations.
- (f) Ship maneuvering and handling:
 - (1) Shiphandling in rivers, estuaries.
 - (2) Maneuvering in shallow water.
 - (3) Interaction with bank or passing ship.
- (4) Berthing and unberthing.
- (5) Anchoring and mooring.
- (6) Dragging, clearing fouled anchors.
- (7) Wake reduction.

(g) Ship stability, construction, and damage control:

- (1) Principles of ship construction.
- (2) Trim and stability.
- (h) Ship power plants:
 - (1) Marine power plant operating principles.
 - (2) Ship's auxiliary machinery.
 - (3) Marine engineering terms.
- (i) Cargo stowage and securing, including cargo gear.
 - (2) Loading and discharge operations.
 - (3) Dangerous goods precautions.
 - (4) Pollution regulations.
 - (j) Fire prevention and firefighting appliances:
 - (1) Organization of fire drills.
 - (2) Classes and chemistry of fire.
 - (3) Firefighting systems.
 - (4) Firefighting equipment and regulations.
 - (5) Basic firefighting and prevention.
 - (k) Emergency procedures:
 - (1) Actions prior to and after grounding.
 - (2) Refloating a grounded ship.
 - (3) Collision.
 - (4) Temporary repairs.
 - (5) Passenger and crew safety in emergency.
 - (6) Fire or explosion.
 - (7) Abandon ship.
 - (8) Emergency steering.
 - (9) Rescuing survivors from ships in distress.
 - (10) Man overboard.
 - (l) Medical care:
 - (1) Knowledge and use of first aid.
 - (1) National Maritime law:
 - (m) Maritime law:
 - (i) Certification and documentation of vessels.
 - (ii) Ship sanitation.
 - (iii) Rules and regulations for vessel inspection.
 - (iv) Pollution prevention regulations.
 - (v) Pilotage.
 - (n) Personnel management:
 - (1) Personnel management.
 - (2) Shipboard organization.
 - (3) Required crew training.
 - (o) Communications:
 - (1) Radiotelephone communications.
 - (2) Signals: storm, wreck, distress, and special.
 - (p) Lifesaving:
 - (1) Lifesaving appliance regulations.
 - (2) Lifesaving appliance operation.
 - (q) Demonstration of proficiency:
 - (1) Navigation:
 - (i) Practical chart work.

§ 10.927 Mate of Great Lakes and inland steam or motor vessels of not more than 1600 gross tons.

An applicant for a license as mate of Great Lakes and inland steam or motor vessels of not more than 1600 gross tons

must pass an examination on the subjects listed in this section.

(a) Navigation and position determination:

- (1) Restricted waters:
- (i) Piloting.
- (ii) Chart navigation.
- (2) Terrestrial observations:
- (i) Aids to navigation.
- (ii) Charts, navigation publications,

Notice to mariners.

- (iii) Piloting.
- (iv) Distance off.
- (v) Basic seamanship.
- (vi) Fix or running fix.
- (3) Instruments and accessories.
- (4) Principles of a magnetic compass.
- (b) Watchkeeping:
- (i) Inland Navigational Rules.
- (2) "Basic Principles to be Observed in Keeping a Navigational Watch".

(c) Radar equipment:

See radar observer endorsement requirements (section 10.480).

(d) Compass—magnetic and gyro:

- (1) Principles of magnetic and gyro compasses.
- (2) Magnetic and gyro compass error and correction.
- (e) Meteorology and oceanography:
- (1) Synoptic chart weather forecasting.

(2) Characteristics of weather systems.

(3) Tide and tidal current publications.

(4) Tide and tidal current calculations.

(f) Ship maneuvering and handling:

- (1) Shiphandling in rivers, estuaries.
- (2) Maneuvering in shallow water.
- (3) Interaction with bank or passing ship.

(4) Berthing and unberthing.

(5) Anchoring and mooring.

(6) Dragging, clearing fouled anchors.

(7) Wake reduction.

(g) Cargo handling and stowage:

- (1) Cargo stowage and securing, including cargo gear.

(2) Pollution regulations.

(h) Fire prevention and firefighting appliances:

- (1) Organization of fire drills.
- (2) Class and chemistry of fire.
- (3) Firefighting systems.
- (4) Firefighting equipment and regulations.

(5) Basic firefighting and prevention.

(i) Emergency procedures:

- (1) Collision.
- (2) Temporary repairs.
- (3) Passenger and crew safety in emergency.
- (4) Fire or explosion.
- (5) Emergency steering.
- (j) Medical care:
- (1) Knowledge and use of first aid.
- (k) Maritime law:
- (1) National maritime law:
- (i) Ship sanitation.

(ii) Rules and regulations for vessel inspection.

(l) Communications:

(1) Radiotelephone communications.

(2) Signals: storm, wreck, distress, and special.

(m) Lifesaving:

(1) Lifesaving appliance operation.

(n) Demonstration of proficiency:

(1) Navigation:

(i) Practical chart work.

89§ 10.929 Mate and operator of uninspected passenger vessels of Great Lakes and inland vessels of not more than 200 gross tons.

An applicant for a license as mate of Great Lakes and inland vessels of not more than 200 gross tons must pass an examination on the subjects listed in this section except for those in paragraph (o). An applicant for license as operator of uninspected passenger vessels on Great Lakes and inland waters must pass the same examination, except those topics marked with an asterisk (*). An applicant for a sail or auxiliary sail license must also pass an examination on the subjects listed in paragraph (o) of this section.

(a) Navigation and position determination:

* (1) Restricted waters:

(i) Piloting.

(ii) Chart navigation.

(2) Terrestrial observations:

(i) Aids to navigation.

(ii) Charts, navigation publications, Notice to Mariners.

(iii) Piloting.

(iv) Distance off.

(3) Instruments and accessories.

(4) Basic seamanship.

(5) Principles of a magnetic compass.

(b) Watchkeeping:

(1) Inland Navigational Rules.

* (2) "Basic Principles to be Observed in Keeping a Navigational Watch".

(c) Principles of a magnetic compass.

(d) Meteorology and oceanography:

* (1) Synoptic chart weather forecasting.

(2) Characteristics of weather systems.

* (3) Tide and current publications.

* (4) Tidal current calculations.

(e) Ship maneuvering and handling:

(1) Shiphandling in rivers, estuaries.

(2) Maneuvering in shallow water.

(3) Interaction with bank or passing ship.

(4) Berthing and unberthing.

(5) Anchoring and mooring.

* (6) Dragging, clearing fouled anchors.

(7) Towing operations.

(f) Ship power plants:

(1) Small engine operations and maintenance.

(g) Cargo handling and stowage:

* (1) Cargo storage and securing, including cargo gear.

* (2) Dangerous goods precautions.

(3) Pollution regulations.

(h) Fire prevention and firefighting appliances:

* (1) Organization of fire drills.

* (2) Classes and chemistry of fire.

* (3) Firefighting systems.

(4) Firefighting equipment and regulations.

(5) Basic firefighting and prevention.

(i) Emergency procedures:

(1) Temporary repairs.

(2) Passenger and crew safety in emergency.

(j) Medical care:

(1) Knowledge and use of first aid.

(k) Maritime law:

(1) National maritime law:

(i) Ship sanitation.

* (ii) Rules and regulations for vessel inspection.

(iii) Pollution prevention regulations.

(iv) Rules and regulation for uninspected vessels.

(l) Communications:

(1) Radiotelephone communications.

(2) Signals: storm, wreck, distress, and special.

(m) Lifesaving:

(1) Lifesaving appliance operation.

(n) Demonstration of proficiency:

(1) Navigation:

(i) Practical chart work.

(o) Sail/aux. sail topics:

(1) Sailing terminology.

(2) Sail vessel safety precautions.

(3) Sail vessel rules of the road.

(4) Sail vessel heavy weather precautions and procedures.

(5) Sail vessel operation.

(6) Sail vessel navigation and maneuvering.

- (iii) Time of LAN (local apparent noon).
- (iv) Fix or running fix.
- (5) Terrestrial observations:
- (i) Aids to navigation.
- (ii) Charts, navigation publications, Notice to Mariners.
- (iii) Bearing problems.
- (iv) Fix or running fix.
- (6) Radar equipment: See radar observer endorsement requirements (section 10.480).
- (7) Basic seamanship.
- (b) Watchkeeping:
- (1) COLREGS.
- (2) Inland Navigational Rules.
- (c) Compass-magnetic and gyro:
- (1) principles of magnetic and gyro compasses.
- (2) magnetic and gyro compass error and correction.
- (d) Meteorology and oceanography:
- (1) Characteristics of weather systems.
- (2) Ocean current systems.
- (3) Tide and tidal current publications.
- (4) Tide and tidal current calculations.
- (e) Ship maneuvering and handling:
- (1) Shiphandling in rivers, estuaries.
- (2) Maneuvering in shallow water.
- (3) Interaction with bank or passing ship.
- (4) Berthing and unberthing.
- (5) Anchoring and mooring.
- (6) Dragging, clearing fouled anchors.
- (7) Heavy weather operations, including ship or aircraft in distress, towing.
- (8) Maneuvering for launching lifeboats and liferafts in heavy weather.
- (9) Wake reduction.
- (f) Ship stability, construction and damage control:
- (1) Trim and stability.
- (g) Cargo handling and stowage:
- (1) Pollution regulations.
- (h) Fire prevention and firefighting appliances:
- (1) Organization of fire drills.
- (2) Classes and chemistry of fire.
- (3) Firefighting systems.
- (4) Basic firefighting and prevention.
- (i) Emergency procedures:
- (1) Temporary repairs.

- (2) Fire or explosion.
- (3) Abandon ship.
- (4) Emergency steering.
- (5) Man overboard.
- (j) Medical care:
- (1) Knowledge and use of first aid.
- (k) Maritime law:
- (1) National maritime law:
- (i) Documentation of vessels.
- (ii) Ship sanitation.
- (iii) Rules and regulations for uninspected vessels.
- (l) Communications:
- (1) Signals: storm, wreck, distress, and special.
- (m) Lifesaving:
- (1) Lifesaving appliance operation.
- (n) Demonstration of proficiency:
- (1) Navigation:
- (i) Sextant, pelorus, azimuth mirror.
- (ii) Practical chart work.

§ 10.937 Mate of uninspected fishing industry vessels.

An applicant for a license as mate of uninspected fishing industry vessels must pass a written or an oral examination on the subjects listed in this section.

- (a) Navigation and position determination:
- (1) Ocean track plotting:
- (i) Chart navigation.
- (2) Restricted waters:
- (i) Chart navigation.
- (3) Instruments and accessories.
- (4) Celestial observations including:
- (i) Latitude by meridian altitude.
- (ii) Time of LAN (local apparent noon).
- (iii) Fix or running fix.
- (iv) Azimuth of the sun.
- (v) Longitude by position line or by time sight of the sun.
- (5) Terrestrial observations:
- (i) Aids to navigation.
- (ii) Charts, navigation publications, Notice to Mariners.
- (iii) Bearing problems.
- (iv) Fix or running fix.
- (6) Radar equipment. See radar observer endorsement requirements (section 10.480).
- (7) Basic seamanship.

- (b) Watchkeeping:
- (1) COLREGS.
- (2) Inland Navigational Rules.
- (c) Compass-magnetic and gyro:
- (1) Principles of magnetic and gyro compasses.
- (2) Magnetic and gyro compass error and correction.
- (d) Ship maneuvering and handling:
- (1) Anchoring and mooring.
- (2) Heavy weather operation, including ship or aircraft in distress, towing.
- (3) Maneuvering for launching lifeboat and liferafts.
- (e) Meteorology and oceanography:
- (1) Characteristics of weather systems.
- (2) Ocean current systems.
- (3) Tide and tidal current publications.
- (4) Tide and tidal current calculations.
- (f) Cargo handling and stowage:
- (1) Pollution regulations.
- (g) Ship stability, construction and damage control:
- (1) Trim and stability.
- (h) Fire prevention and firefighting appliances:
- (1) Organization of fire drills.
- (2) Classes and chemistry of fire.
- (3) Firefighting systems.
- (4) Basic firefighting and prevention.
- (i) Emergency procedures:
- (1) Temporary repairs.
- (2) Fire or explosion.
- (3) Abandon ship.
- (4) Emergency steering.
- (5) Man overboard.
- (j) Medical care:
- (1) Knowledge and use of first aid.
- (k) Communications:
- (1) Signals: storm, wreck, distress, and special.
- (l) Lifesaving:
- (1) Lifesaving appliance operation.
- (m) Demonstration of proficiency:
- (1) Navigation:
- (i) Sextant, pelorus, azimuth mirror.
- (ii) Practical chart work.

§ 10.950 Subjects of engineer officers' licenses.

BILLING CODE 4910-14-M

TABLE 10.950 Subjects for Engineer Officers' License

| | C/DG UWL | | I/A ENG UWL | | 3/A ENG UWL | | D D ENG | | C/E UWL | | A/E UWL | |
|---|----------|-----|-------------|-----|-------------|-----|---------|-----|---------|---------|---------|---------|
| | STM | MTR | STM | MTR | STM | MTR | STM | MTR | MTR P/V | MTR P/V | MTR P/V | MTR P/V |
| I Theoretical Knowledge | | | | | | | | | | | | |
| 1. Thermodynamics | | | X | X | X | X | | | | | | |
| 2. Combustion Processes | X | | X | X | X | X | X | X | | | | |
| 3. Gears | | | | | | | | | | | | |
| 4. Transmission | X | X | X | X | X | X | X | X | | | | |
| 5. Mechanics & Hydromechanics | X | X | X | X | X | X | X | X | | | | |
| 6. Propulsion System Operating Prin. | | | | | | | | | | | | |
| - Diesel | | X | | X | | X | | X | | | | |
| - Steam | X | | X | | X | | X | | X | | | |
| 7. Refrigeration | X | X | X | X | X | X | X | X | | | | |
| 8. Steering Gear | X | X | X | X | X | X | X | X | | | | |
| 9. Properties of Fuels and Lubricants | X | X | X | X | X | X | X | X | | | | |
| 10. Technology/Properties of Materials | X | X | X | X | X | X | X | X | | | | |
| 11. Fire and Extinguishing Agents | | | X | X | X | X | X | X | | | | |
| 12. Marine Electrotechnology | X | X | X | X | X | X | | | | | | |
| 13. Marine Electronics | X | X | X | X | X | X | X | X | | | | |
| 14. Marine Electrical Equipment | X | X | X | X | X | X | X | X | | | | |
| 15. Automation, Instrumentation and Control Systems | X | X | X | X | X | X | X | X | | | | |
| 16. Naval Architecture | X | X | X | X | X | X | | | | | | |
| 17. Ship Construction | X | X | X | X | X | X | X | X | | | | |
| 18. Damage Control | X | X | X | X | X | X | X | X | | | | |
| II Practical Knowledge | | | | | | | | | | | | |
| 1. Operation/Maintenance | | | | | | | | | | | | |
| - Diesel Plant | | X | | X | | X | | X | | | | |
| - Steam Plant | X | | X | | X | | X | | | | | |
| 2. Operation/Maintenance of Auxiliary Machinery including (but not limited to): | X | X | X | X | X | X | X | X | | | | |
| - Pumping/Piping Systems | | | | | | | | | | | | |
| - Auxiliary Boiler Plant | | | | | | | | | | | | |
| - Steering Gear Systems | | | | | | | | | | | | |
| - Propellers and Shafting Systems | | | | | | | | | | | | |
| - Auxiliary Diesel Plants | | | | | | | | | | | | |
| - Sanitary/Fresh Water Systems | | | | | | | | | | | | |
| - Distilling Systems | | | | | | | | | | | | |
| - Lubrication Systems | | | | | | | | | | | | |
| - Automation Systems | | | | | | | | | | | | |
| - Control Systems | | | | | | | | | | | | |
| - Cooling Systems | | | | | | | | | | | | |
| - Ventilation Systems | | | | | | | | | | | | |
| 3. Operation/Maintenance/Testing/Control of Electrical and Control Equipment | X | X | X | X | X | X | X | X | | | | |
| 4. Operation/Maintenance of | | | | | | | | | | | | |
| - Cargo Handling Equipment | X | X | X | X | X | X | X | X | | | | |
| - Deck Machinery | X | X | X | X | X | X | X | X | | | | |
| 5. Machinery Malfunction Detection and Action to Prevent Damage | X | X | X | X | X | X | X | X | | | | |
| 6. Maintenance & Repair Procedures | X | X | X | X | X | X | X | X | | | | |

| | | | | | | | | | | |
|--|---|---|---|---|---|---|---|---|---|---|
| 7. Fire Prevention, Detection, and Extinguishment | x | x | x | x | x | x | x | x | x | x |
| 8. Methods to Prevent Pollution by Vessels | x | x | x | x | x | x | x | x | x | x |
| 9. Pollution Prevention Regulations | x | x | x | x | x | x | x | x | x | x |
| 10. Effects of Marine Pollution on the Environment | x | x | x | x | x | x | x | x | x | x |
| 11. First Aid/First Aid Equipment | x | x | x | x | x | x | x | x | x | x |
| 12. Lifesaving Appliances | x | x | x | x | x | x | x | x | x | x |
| 13. Damage Control including Engine Room Flooding | x | x | x | x | x | x | x | x | x | x |
| 14. Safe Working Practices | x | x | x | x | x | x | x | x | x | x |
| III Watchstanding | | | | | | | | | | |
| 1. Change of Watch | x | x | x | x | x | x | x | x | x | x |
| 2. Routine Watch Duties | x | x | x | x | x | x | x | x | x | x |
| 3. Machinery Log Book | | | x | x | x | x | x | x | x | x |
| 4. Main/Auxiliary Machinery Start Up Procedures | x | | x | x | x | x | x | x | x | x |
| 5. Boiler Operation | x | | x | x | x | x | x | x | x | x |
| 6. Boiler Water Levels | x | | x | x | x | x | x | x | x | x |
| 7. Diesel Plant Operation | | x | x | x | x | x | x | x | x | x |
| 8. Routine Pumping Operations | x | x | x | x | x | x | x | x | x | x |
| 9. Bilge, Ballast, Cargo Pumping Systems | x | x | x | x | x | x | x | x | x | x |
| 10. Generator/Alternator Synchronizing & Shifting | x | x | x | x | x | x | x | x | x | x |
| 11. Watch Safety Precautions | | | x | x | x | x | x | x | x | x |
| 12. Fire or Accident | x | x | x | x | x | x | x | x | x | x |
| 13. Electrical Safety Precautions | x | x | x | x | x | x | x | x | x | x |
| IV Miscellaneous | | | | | | | | | | |
| 1. Approval Fire Fighting Course ¹ | | | x | x | x | x | x | x | x | x |
| 2. International Rules and Regulations Regarding Machinery/Engineering | x | x | x | x | x | x | x | x | x | x |
| 3. U.S. Rules and Regulations Regarding Machinery/Engineering | x | x | x | x | x | x | x | x | x | x |

NOTE: ¹ Required only for service on vessels of greater than 200 gross tons or greater than 1,000 horsepower in ocean/near coastal service

BILLING CODE 4910-14-C

SUBCHAPTER D—TANK VESSELS**PART 35—OPERATIONS**

§ 35.05-5 and § 35.05-10 [Removed and reserved]

16. By removing and reserving 35.05-5 and 35.05-10.

SUBCHAPTER P—MANNING OF VESSELS**PART 157—MANNING REQUIREMENTS**

17. Part 157 of 46 CFR Subchapter P is redesignated as 46 CFR Subchapter B, Part 15 and revised to read as follows:

PART 15—MANNING REQUIREMENTS**Subpart 15.100—Purpose and Applicability**

Sec.

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15.103 General.

Subpart 15.300—Definition of Terms

15.301 Definition of terms used in this part.

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15.405 Changes in the certificate of inspection.

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15.805 Master.

15.810 Mate.

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15.825 Chief engineer.

15.830 Engineers.

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15.845 Able seaman.

15.850 Lifeboatman.

15.855 Lookouts.

15.860 Cabin watchmen and fire patrolmen.

15.865 Maintenance persons.

Subpart 15.900—Equivalents.

15.901 Licenses required on board inspected vessels of less than 100 gross tons.

15.905 Uninspected passenger vessels.

15.910 Uninspected towing vessels.

Authority: 46 U.S.C. 3703; 8105; 9102; 49 CFR 1.46(b).

Subpart 15.100—Purpose and Applicability**§ 15.101 Purpose of regulations.**

The purpose of the regulations in this part is to set forth uniform minimum requirements for the manning of vessels. In general, they implement, interpret, or apply the specific statutory manning requirements in Title 46, United States Code, Part F, implement various international conventions which affect merchant marine personnel, and provide the means for establishing the complement necessary for safe operation of vessels.

§ 15.103 General.

(a) The regulations in this part apply to all vessels which are subject to the manning requirements contained in the navigation and shipping laws of the United States, including uninspected vessels (46 U.S.C. 8101-9308).

(b) The navigation and shipping laws state that a vessel may not be operated unless certain manning requirements are met. In addition to establishing a minimum of licensed individuals and members of the crew to be carried on board certain vessels they establish minimum qualifications concerning licenses, citizenship, and conditions of employment. It is the responsibility of the owner, charterer, managing operator, master, or person in charge or command of the vessel to determine if the licensed individuals and crew carried meet the requirements of the applicable navigation and shipping laws.

(c) Inspected vessels are issued a certificate of inspection which indicates the minimum complement of licensed individuals and crew (including lifeboatmen) considered necessary for safe operation. The certificate of inspection complements the statutory requirements but does not supersede them.

Subpart 15.300—Definition of Terms**§ 15.301 Definition of terms used in this part.**

The terms defined in this subpart apply only to manning of vessels subject to the manning provisions in the navigation and shipping laws of the United States.

(a) The following categories of licensed individuals are defined in Part 10 of this chapter. Persons holding valid

licenses may serve in the capacity for which licensed subject to any restrictions placed on the license.

- (1) Master;
- (2) Mate;
- (3) Pilot;
- (4) Engineer;
- (5) Designated Duty Engineer;
- (6) Radio Officer;
- (7) Operator of Uninspected Towing Vessels;
- (8) Operator of Uninspected Passenger Vessel.

(b) The following categories of ratings are defined in Part 12 of this chapter. Persons holding a valid merchant mariner's document endorsed for these ratings may serve in the specified capacity subject to any restriction placed on the document.

- (1) Able Bodied Seaman;
- (2) Ordinary Seaman;
- (3) Qualified Member of the Engine Department;
- (4) Tankerman;
- (5) Lifeboatman;
- (6) Wiper.

(c) "Seaman" means an individual (except scientific personnel, a sailing school instructor, or a sailing school student) engaged or employed in any capacity on board a vessel owned by a citizen of the United States.

(d) "Staff officer" means a person who holds a certificate of registry in the staff department such as a Purser, a Medical Doctor or Professional Nurse, which is issued by the Coast Guard.

(e) "Deck crew" (excluding licensed individuals) as used in 46 U.S.C. 8702, includes only the following members of the deck department below the grade of licensed individual: able seamen, and ordinary seamen.

(f) "Maintenanceperson" means a person holding a merchant mariner's document issued by the Coast Guard employed within the maintenance department of vessels having such a department. If the words deck or engine precede the term maintenanceperson on the certificate of inspection it indicates the individual is considered to be a member of that associated department. Deck maintenancepersons, although member of the deck department, are not considered deck crew.

Subpart 15.400—Manning Requirements; Inspected Vessels**§ 15.401 Certificate of inspection.**

(a) The certificate of inspection (COI) issued by the Officer in Charge, Marine Inspection (OCMI), to a vessel required to be inspected under 46 U.S.C. 3301 specifies the minimum complement of officers and crew necessary for the safe operation of the vessel.

(b) The manning requirements for a particular vessel are determined by the OCMI after a consideration of the applicable laws, the regulations in this part, and all other factors involved, such as: size and type of vessel proposed routes of operation, cargo carried, type of business in which employed, degree of automation, use of labor saving devices, and the organizational structure of the vessel.

§ 15.405 Changes in the certificate of inspection.

All requests for changes in manning as indicated on the certificate of inspection must be made to the OCMI who last issued the certificate of inspection, unless the request is made in conjunction with an inspection for certification, in which case the request should be addressed to the OCMI conducting the inspection.

§ 15.410 Right of appeal.

Whenever any person directly interested in or affected by any decision or action of any OCMI, feels aggrieved by such decision or action with respect to manning requirements, the person has the right to appeal such decision or action under the provisions of § 2.01-10 of this title. Pending the determination of the appeal, the crew specified on the certificate of inspection must be carried.

§ 15.415 Compliance with certificate of inspection

(a) Except as provided by 46 U.S.C. 8101(e), and as stated in sections 15.720 and 15.725, no vessel subject to inspection may be operated unless it has in its service and on board the complement required by the certificate of inspection.

(b) Any vessel subject to the provisions of this subpart must, while on a voyage, be under the actual direction and control of an individual licensed by the Coast Guard to operate that vessel in the geographic area in which the vessel is operating.

(1) For the purposes of this subsection:

(i) A voyage is the period of time necessary to transit from the port of departure to the port of arrival.

(ii) A port does not include an Outer Continental Shelf (OCS) facility as defined in 33 CFR Part 141.

§ 15.420

Mobile offshore drilling units (Reserved).

§ 15.425 Reference to other parts.

Parts 31 and 35 of Subchapter D of this chapter contain additional manning requirements applicable to tank vessels.

Subpart 15.500—Manning Requirements; Uninspected Vessels

§ 15.501 Licensed individuals for uninspected vessels, generally.

Except as required by §§ 15.505, 15.510 and Subpart 15.700 of this part there are no specific manning requirements for uninspected vessels. It is the masters obligation to ensure that appropriate personnel are carried to comply with law and regulation.

§ 15.505 Licensed operators for uninspected passenger vessels.

Each uninspected vessel carrying not more than 6 passengers, as defined by 46 U.S.C. 2101(21)(D), must be under the direction and control of an individual licensed by the Coast Guard.

§ 15.510 Licensed operators for uninspected towing vessels.

Every uninspected towing vessel which is at least 26 feet in length measured from end to end over the deck (excluding sheer) must be under the direction and control of an individual licensed by the Coast Guard.

Subpart 15.700—Limitations and Qualifying Factors

§ 15.701 Officers' Competency Certificates Convention, 1936.

(a) This section implements the Officers' Competency Certificates Convention, 1936, and applies to each vessel documented under the laws of the United States navigating seaward of the boundary lines in Part 7 of this chapter except—

- (1) A public vessel;
 - (2) A wooden vessel of primitive build;
 - (3) A barge; and,
 - (4) A vessel of less than 200 gross tons.
- (b) The master, mates and engineers on any vessel to which this section applies must hold a license to serve in that capacity issued by the Coast Guard under Part 10 of this chapter.

(c) A vessel to which this section applies, or a foreign flag vessel to which the Convention applies, may be detained by a designated official until that official is satisfied that the vessel is in compliance with the Convention.

(d) "Designated official" includes Coast Guard officers, Coast Guard petty officers and officers or employees of the Customs Service.

(e) Whenever a vessel is detained, the owner, charter, managing operator, agent, master, or individual in charge may appeal the detention within five days under the provisions of § 2.01-7 of this Title.

§ 15.705 Watches.

(a) 46 U.S.C. 8104 contains the law applicable to the establishment of

watches aboard certain U.S. vessels of more than 100 gross tons. The establishment of adequate watches is the responsibility of the vessel's master. The Coast Guard interprets "watch", to be the direct performance of vessel operations, whether deck or engine, where such operations would routinely be controlled and performed in a scheduled and fixed rotation. The performance of maintenance or work necessary to the vessel's safe operation on a daily basis does not in itself constitute the establishment of a watch. The minimal safe manning levels specified in a vessel's certificate of inspection takes into consideration routine maintenance requirements and ability of the crew to perform all operational evolutions, including emergencies, as well as those functions which may be assigned to persons in watches.

(b) Subject to exceptions contained in the statute, 46 U.S.C. 8104 requires that when a master of a seagoing vessel of more than 100 gross tons establishes watches for the licensed individuals, sailors, coal passers, firemen, oilers and watertenders, the personnel are to be "divided when at sea into 3 watches and to be kept on duty successively to perform ordinary work incident to the operation and management of the vessel." The Coast Guard interprets "sailors" to mean those members of the deck department other than licensed officers, whose duties involve the mechanics of conducting the ship on its voyage, such as helmsman (wheelman), lookout, etc., and which are necessary to the maintenance of a continuous watch. "Sailors" is not interpreted to include able seamen and ordinary seamen not performing these duties.

(c) Under the provisions of 46 U.S.C. 8104(h), while serving on uninspected towing vessels of less than 200 gross tons an individual licensed to operate a towing vessel may not work more than 12 hours in a consecutive 24 hour period except in an emergency. The Coast Guard interprets this in conjunction with other provisions of the law to permit individuals licensed as operators of uninspected towing vessels to be divided into two watches regardless of the length of the voyage.

(d) Fish processing vessels are subject to various provisions of 46 U.S.C. 8104 concerning watches.

(1) For fish processing vessels that entered into service before January 1, 1988, the following watch requirements apply to the licensed officers and deck crew:

- (i) If over 5000 gross tons—3 watches.

(ii) If between 1600 gross tons and 5000 gross tons—2 watches.

(iii) If under 1600 gross tons—no watch division specified.

(2) For fish processing vessels which enter into service after December 21, 1987, the following watch requirements apply to the licensed officers and deck crew:

(i) If over 5000 gross tons—3 watches.

(ii) If not more than 5000 gross tons, and having more than 16 individuals on board primarily employed in the preparation of fish or fish products—2 watches.

(iii) If not more than 5000 gross tons and having not more than 16 individuals on board primarily employed in the preparation of fish or fish products—no watch division specified.

§ 15.710 Working hours.

(a) In addition to prescribing watch requirements, 46 U.S.C. 8104 sets limitations on the mandatory working hours of licensed individuals and crew members, prescribes certain rest periods, and prohibits unnecessary work on Sundays and certain holidays. It is the responsibility of the master or person in charge to ensure that these limitations are met. However, under 46 U.S.C. 8104(f), the master or other officer can require any part of the crew to work when, in his or her judgement, they are needed for:

(1) maneuvering, shifting berth, moorings unmooring;

(2) performing work necessary for the safety of the vessel, or the vessel's passengers, crew or cargo;

(3) saving of life on board another vessel in jeopardy; or

(4) performing fire, lifeboat, or other drills in port or at sea.

§ 15.715 Automated vessels.

Technological innovation has provided a means of augmenting or reducing manual labor requirements on board vessels while maintaining safe operations. The use of man/machine synergistic systems (automation) to perform functions previously requiring constant manual attendance has resulted in a decreased number of individuals being needed on vessels. The acceptance of automation to replace specific personnel or to reduce overall crew requirements will be predicated on a period of proven reliability for the particular automation system being considered. The OCMI considers the technical capabilities of a system in establishing initial manning levels; however, until such times as the system is proven reliable, a manning level adequate to operate in a continuously manned mode will be specified in the

COL. It remains the master's responsibility to determine when a continuous watch is necessary, as specified in Subpart 15.705.

§ 15.720 Use of non-U.S. licensed and/or documented personnel overseas.

(a) United States vessels which need to replace one or more persons while outside the jurisdiction of the United States, in order to meet the manning requirements of its certificate of inspection, may utilize non-U.S. licensed and documented personnel until the vessel's first return to a U.S. port. The master must always be a U.S. citizen.

(b) The master shall assure that any replacement will be with an individual who holds a license or document which equates to the U.S. license or document required for the position and that the person possesses or will possess the training required of the position, including an ability to communicate to the extent required by § 15.730.

§ 15.725 Sailing short.

(a) Whenever a vessel is deprived of the service of a member of its complement, and the master is unable to find appropriate licensed or documented personnel to man the vessel, the master may proceed on the voyage having determined the remaining personnel are adequate for the voyage. A report of sailing short must be filed in writing with the Officer in Charge, Marine Inspection, (OCMI) having cognizance for inspection in the area in which the vessel is operating or the OCMI within whose jurisdiction the voyage is completed. The report must explain the cause of each deficiency and be submitted within twelve hours after arrival at the next port. The master's actions in such instances are subject to review and it must be shown the vacancy was not due to the consent, fault or collusion of the master or other individuals specified in 46 U.S.C. 8101(e). A civil penalty may be assessed against the master for failure to submit the report.

§ 15.730 Language requirements.

(a) The provisions of 46 U.S.C. 8702 relating to language apply generally to vessels of at least 100 gross tons except—

(1) Vessels operating on rivers and lakes (except the Great Lakes);

(2) A manned barge (except a seagoing barge or a barge to which chapter 37 of 46 U.S.C. applies);

(3) A fishing vessel, fish tender vessel, whaling vessels, or yacht;

(4) A sailing school vessel with respect to sailing school instructors and sailing school students;

(5) An oceanographic research vessel with respect to scientific personnel;

(6) A fish processing vessel which entered into service before January 1, 1988, and is not more than 1600 gross tons or which enters service after December 31, 1987, and has not more than 16 individuals on board primarily employed in the preparation of fish or fish products; and,

(7) All fish processing vessels with respect to those personnel primarily employed in the preparation of fish or fish products or in a support position not related to navigation.

(b) 46 U.S.C. 8702(b) requires that on board vessels departing U.S. ports "75 percent of the crew in each department is able to understand any order spoken by the officers."

(c) The words "able to understand any order spoken by the officers" relates to any order to a member of the crew when directing the performance of that person's duties and orders relating to emergency situations such as used for response to a fire or in using lifesaving equipment. It is not expected that a member of the deck department understand terminology normally used only in the engine room or vice versa.

(d) Whenever information is presented to the Coast Guard that a vessel fails to comply with the specified language requirements the Coast Guard investigates the allegation to determine its validity. In determining if an allegation is factual, the Coast Guard may require a demonstration by the licensed individuals and crew that appropriate orders are understood. The demonstration will require that orders be spoken to the individual members of the crew by the licensed officers in the language ordinarily and customarily used by the officers. The orders must be spoken directly by the officer to the crew member and not through an interpreter. Signs, gestures, or signals may not be used in the test. The Coast Guard representative will specify the orders to be given and will include not only daily routine but orders involving emergencies either of a departmental or of a general nature. This test will be conducted, if possible, at a time reasonably in advance of the vessel's departure, to avoid delays.

Subpart 15.800—Computations

§ 15.801 General.

(a) The Officer in Charge, Marine Inspection, (OCMI) will determine the specific manning levels for vessels required to have certificates of inspection by part B of Title 46 U.S.C. The OCMI will make such

determinations for proper manning levels on non-certificated vessels within that officer's zone as may be necessary in enforcing the laws, regulations and conventions. The masters of all vessels, whether certificated or not, are by U.S. law responsible for properly manning vessels in accordance with the applicable laws, regulations, and international conventions.

§ 15.805 Master.

(a) There must be an individual holding an appropriate license as master issued by the Coast Guard in command of each of the following vessels:

- (i) Every self-propelled, seagoing documented vessel over 200 gross tons.
- (ii) Every manned, self-propelled, inspected vessel.
- (iii) Every inspected passenger vessel.

(b) Every vessel documented under the laws of the United States, must be under the command of a U.S. citizen.

§ 15.810 Mates.

(a) The minimum number of licensed mates required to be carried on every inspected self-propelled seagoing and Great Lakes vessel and every inspected seagoing passenger vessel is as follows:

(1) Vessels of 1000 gross tons or more—3 licensed mates (except when on a voyage of less than 400 miles from port of departure to port of final destination—2 licensed mates).

(2) Vessels of 100 or more gross tons but less than 1000 gross tons—2 licensed mates (except vessels of at least 100 but less than 200 gross tons on voyages which do not exceed 24 hours in duration—1 licensed mate).

(3) All offshore supply vessels over 100 gross tons—2 licensed mates (except when on a voyage of less than 600 miles—1 licensed mate). A voyage includes the distance from port of departure to port of arrival and does not include stops at offshore points.

(4) All vessels less than 100 gross tons—one licensed mate (except vessels on voyages not exceeding 12 hours in duration may, if the OCMI determines it to be safe, be navigated with no licensed mates).

(b) The OCMI may increase the minimum number of mates indicated above where it is deemed the vessel's characteristics, route, or other operating conditions create special circumstances requiring an increase.

(c) The Commandant will consider reductions to the above stated numbers when special circumstances can be demonstrated allowing a vessel to be safely operated.

§ 15.815 Pilots (Reserved)

§ 15.820 Radar observer.

(a) Each person in the required complement of deck officers, including the master, on inspected vessels of 300 gross tons or over which are radar equipped, shall hold a valid endorsement as radar observer.

(b) Each person who is employed or serves as pilot in accordance with federal law on board inspected vessels of 300 tons or over which are radar equipped, shall hold a valid endorsement as radar observer.

§ 15.825 Chief engineer.

(a) There must be a chief engineer aboard all mechanically propelled seagoing vessels, or inspected mechanically propelled Great Lakes vessels, of 200 gross tons and over.

(b) When specified on the certificate of inspection of a mechanically propelled seagoing or Great Lakes vessel of not more than 1600 gross tons, a person holding a license as "designated duty engineer" may serve in the capacity of chief engineer.

(c) On an inspected, mechanically propelled vessel of 300 gross tons or over restricted to a river, or lake (other than the Great Lakes), bays or sounds routes, the licensed individual in charge of the engineering plant shall, as a minimum, hold a license as designated duty engineer.

§ 15.830 Engineers.

(a) The Officer in Charge, Marine Inspection, determines the minimum number of licensed engineers required for the safe operation of inspected vessels.

(b) A licensed engineer must be carried upon every seagoing mechanically propelled freight or passenger vessel of 300 gross tons and above; every offshore supply vessel of more than 200 gross tons; and, every other vessel of 200 gross tons and above upon which a person performing the task of engineer is carried.

§ 15.835 Radio officers.

Radio officers and radiotelegraph operators are required on certain merchant vessels of the United States. The determination of when a radio officer is required is based on the Federal Communications Commission radiotelegraph requirements in 47 CFR Part 83.

§ 15.840 Staff officers.

Staff officers, when carried, must be registered as specified in part 10 of this chapter.

§ 15.845 Able seamen.

(a) With certain exceptions, 46 U.S.C. 8702 applies to all vessels of at least 100 gross tons. For vessels required to maintain a 3 watch system, at least 65% of the deck crew, excluding licensed individuals, must be able seamen. For vessels permitted to maintain a 2 watch system, the percentage of able seamen may be reduced to 50%.

(b) Able seamen are rated as; unlimited, limited, limited special, offshore supply vessel, and fishing industry, under the provisions of Part 12 of this title. Under 46 U.S.C. 7312, categories of all able seamen, other than unlimited, may constitute some or all of the able seamen necessary to meet 46 U.S.C. 8702.

(c) It is the responsibility of the master or person in charge of the crew to ensure that the able seamen in the service of the vessel meet the requirements of 46 USC 7312 and 8702.

§ 15.850 Lifeboatman.

The number of lifeboatmen required for a vessel are specified in the parts of the regulations dealing with the inspection of that specific type of vessel.

§ 15.855 Lookouts.

The requirements for the maintenance of a proper lookout are specified in Rule 5 of the International Regulations for Preventing Collisions at Sea, 1972, and Rule 5 of the Inland Navigational Rules Act of 1980 (33 U.S.C. 2005). Lookout is a function to be performed by a member of a navigational watch.

§ 15.860 Cabin watchmen and fire patrolmen.

(a) On vessels carrying passengers at night, the master or person in charge shall ensure that a suitable number of watchmen are in the vicinity of the cabins or staterooms and on each deck to guard against and give alarm in case of fire or other danger.

(b) On a fish processing vessel of more than 100 gross tons there shall be a suitable number of watchmen trained in firefighting on board when hot work is being done to guard against and give alarm in case of a fire.

§ 15.865 Maintenancepersons.

A requirement for maintenanceperson(s) on inspected vessels may exist where installed labor saving devices or automated equipment have allowed for a reduction of personnel. The maintenanceperson(s) may be required: to properly maintain the vessel; to provide a backup for watch purposes in the event of equipment failure; when necessary for the performance of emergency

evolutions; or when necessary to provide personnel for functions which used to be collateral duties of a position(s) now identified for reduction. Maintenancepersons required on a certificate of inspection may fall into three categories:

(a) Deck maintenanceperson—required to augment the deck crew in maintaining the vessel and/or for emergencies. Normally considered day working personnel.

(b) Engine maintenanceperson—required to augment the engineering work force. Normally considered day working personnel.

(c) Maintenanceperson—normally assigned to work within a maintenance department on vessels having such a department.

The OCMI specifies the number of maintenancepersons required, when appropriate, and may require they hold specific qualifications as delineated in part 12 of this chapter.

Subpart 15.900—Equivalents

§ 15.901 Licenses required on board inspected vessels of less than 100 gross tons.

(a) The licensed master and mate(s) required for the operation of any vessel shall be in possession of a license attesting to their proficiency for that position for the route and type of vessel being navigated.

(b) A person holding a master or mates license allowing service on any inspected vessels (except licenses as mates of vessels of less than 200 gross tons) is authorized to serve as master on inspected vessels of less than 100 gross tons within any restrictions or limitations of the license.

(c) A license which authorizes the holder to serve as master or mate of a mechanically propelled vessel or a sail vessel subject to inspection, also authorizes the holder to serve as master or mate, respectively, of a passenger barge. A license which authorizes the holder to serve as master or mate of an auxiliary sail vessel subject to inspection, also authorizes the holder to serve as master or mate, respectively, of mechanically propelled or sail vessels, subject to the route and tonnage limitations on the license.

(d) Persons holding a license as master allowing service on inspected steam or motor vessel of less than 200 gross tons may serve as pilot on these vessels, subject to the route limitations on their license and provided all other applicable requirements pertaining to pilots in this part have been satisfied.

§ 15.905 Uninspected passenger vessels.

A license as master or mate authorizes the holder to serve as an operator of uninspected passenger vessels within any restrictions or limitations of the license.

§ 15.910 Uninspected towing vessels.

(a) A license as master, or a license as mate on vessels over 200 gross tons, authorizes the holder to serve as operator of uninspected towing vessels within any restrictions or limitations of the license.

(b) Whenever an uninspected towing vessel is under the direction and control of a person licensed as second-class operator of uninspected towing vessels, a person holding a license authorizing service as operator of uninspected towing vessels must be on board as a member of the crew.

(c) A license which authorizes the holder to serve as mate of vessels of not more than 200 gross tons authorizes the holder to serve as second-class operator of uninspected towing vessels within any restrictions or limitations of the license.

SUBCHAPTER T—SMALL PASSENGER VESSELS (UNDER 100 GROSS TONS)

PART 175—GENERAL PROVISIONS

18. The authority citation for Part 175 is revised to read as follows, and all other authority citations with this part are deleted:

Authority: 46 U.S.C. 3306; 49 CFR 1.46(b).

19. Section 175.01-1 is amended by revising paragraph (a) to read as follows:

§ 175.01-1 General.

(a) The regulations in this subchapter are prescribed by the Commandant of the Coast Guard, pursuant to a delegation of authority by the Secretary of Transportation set forth in 49 CFR 1.46(b), to carry out the intent and purpose of Title 46, United States Code, Sections 3301, 3302, 3307, 7101 and 8101, which require the inspection and certification of certain vessels of less than 100 gross tons carrying freight for hire or more than six passengers.

20. By revising § 175.10-13 to read as follows:

§ 175.10-13 Headquarters.

This term means the office of the Commandant, United States Coast Guard, Washington, D.C. 20593.

21. By adding a new § 175.10-15 to read as follows:

§ 175.10-15 Master.

This term means the officer having command of the vessel.

PART 185—OPERATIONS

22. The authority citation for Part 185 is revised to read as follows, and all other authority citations with this part are deleted:

Authority: 46 U.S.C. 3306, 6101, 8105; 49 CFR 1.46(b).

23. By revising § 185.10-1 to read as follows:

§ 185.10-1 Officers' licenses.

The licensed individuals employed upon any vessel subject to the provisions of this subchapter shall have their licenses in their possession and available for examination at all times when the vessel is operated.

24. By revising § 185.17-1 to read as follows:

§ 185.17-1 Use prohibited by law.

No person may use as vessel subject to the provisions of this subchapter in a negligent manner so as to endanger the life, limb, or property of any person. Violations of this subpart involving use which is grossly negligent, subject the violator, in addition to any other penalties, to the criminal penalties prescribed in 46 U.S.C. 2302.

25. By revising § 185.19-1 to read as follows:

§ 185.19-1 Duty of master.

The master of a vessel involved in a collision, accident or other casualty, to the extent possible without serious danger to his or her own vessel or persons aboard, shall render all practicable and necessary assistance to persons affected by the collision, accident, or casualty. The master shall also give his or her name, address, and the identification of his or her vessel to any person injured and to the owner of any property damaged.

26. By revising § 185.20-1 to read as follows:

§ 185.20-1 Compliance with provisions of certificate of inspection.

The master of the vessel must ensure that all of the provisions of the certificate of inspection are strictly adhered to; however, the master may divert from the route prescribed in the certificate of inspection or take such other steps as deemed necessary and prudent to assist vessels in distress or for other similar emergencies.

27. By revising § 185.20-10 to read as follows:

§ 185.20-10 Steering gear tests.

The master or mate of every vessel, before getting underway for a day's operation, shall test the steering gear, signaling whistle, controls and communication system.

28. By revising § 185.20-15 to read as follows:

§ 185.20-15 Hatches.

It shall be the duty of the master of any vessel to assure that all exposed hatches are properly secured before getting underway for a voyage on other than protected waters.

29. By revising § 185.20-20 to read as follows:

§ 185.20-20 Vessels carrying vehicles.

(a) Automobiles or other vehicles shall be stowed in such a manner as to permit their occupants to get out and away from them freely in the event of fire or other disaster. The decks, where necessary, shall be distinctly marked with painted lines to indicated the vehicle runways and the aisle spaces.

(b) The master shall take any necessary precautions to see that automobiles or other vehicles have their motors turned off and their emergency brakes set when the vessel is underway, and that the motors are not started until the vessel is secured to the landing. In addition, the vehicles at each end shall have their wheels securely blocked, while the vessel is being navigated.

(c) The master shall have appropriate "NO SMOKING" signs posted and shall take all necessary precautions to prevent smoking or smoldering cigars, cigarettes, etc., in the deck area assigned to automobiles or other vehicles.

30. Section § 185.20-30 is amended by revising paragraph (c) to read as follows:

§ 185.20-30 Use of auto pilot.

(c) All other hazardous navigational situations, the master shall ensure that:

(1) it is possible to immediately establish manual control of the ship's steering;

(2) a competent person is ready at all times to take over steering control; and,

(3) the changeover from automatic to manual steering and vice versa is made by, or under the supervision of the master or mate.

31. By revising § 185.22-1 to read as follows:

§ 185.22-1 Duties.

(a) At all times during which bunks in passenger areas located below the main deck are occupied, the master shall

designate a member of the vessel's crew as a patrolman.

(b) The patrolman shall be stationed in the vicinity of the cabins or staterooms and on each deck to guard against and give alarm in case of fire or other danger.

§ 185.25-1 [Amended]

32. In section 185.25-1, paragraphs (a) and (d) are amended by removing the phrase "operator in charge" and inserting in their place the word "master."

33. By revising § 185.25-10 to read as follows:

§ 185.25-10 Drills.

The master shall conduct drills and give instructions as necessary to ensure that all crew members are familiar with their duties.

34. By revising § 185.25-15 to read as follows:

§ 185.25-15 Officers' responsibilities.

Nothing in the recommended emergency instructions in this subpart shall exempt any officer from the exercise of good judgment in any emergency situation.

35. By revising § 185.25-20 to read as follows:

§ 185.25-20 Tests of emergency position indicating radiobeacon (EPIRB).

The master of the vessel shall ensure that—

(a) the EPIRB required in § 180.40-1 of this subchapter is tested monthly, using the integrated test circuit and output indicator, to determine that it is operative; and,

(b) the EPIRB's battery is replaced after the EPIRB is used and before the date required by FCC regulations in 47 CFR Part 83.

PART 186—[REMOVED AND RESERVED]

36. By removing and reserving Part 186.

PART 187—[REMOVED AND RESERVED]

37. By removing and reserving Part 187.

J.W. Kime,

Commodore, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

October 15, 1985.

[FR Doc. 85-25003, Filed 10-23-85; 8:45 am]

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46 CFR Parts 10 and 15

[CGD 81-059a]

Licensing of Officers and Operators for Mobile Offshore Drilling Units

AGENCY: Coast Guard, DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Coast Guard is in the process of completely revising the regulations dealing with the licensing of maritime personnel and the manning of vessels. A proposed revision was published on August 8, 1983 (48 FR 35920). This project has now been divided into two separate rulemakings. A supplemental proposal dealing with personnel on conventional vessels is also published in this edition of the *Federal Register*. This proposal deals solely with the licensing of officers on mobile offshore drilling units (MODUs) and the manning of these vessels. This action is being taken due to the substance of the comments received, the public demand for another notice with an open comment period with public hearings, and the unique conditions in the offshore drilling industry. This proposal would establish three industry-restricted licenses and serve as a basis for establishing minimum MODU manning requirements. Current Coast Guard regulations do not adequately address the unique characteristics, operating conditions and procedures, service, and extraordinary chain of command and authority inherent in the offshore oil drilling industry.

DATE: Comments must be received on or before February 21, 1986.

ADDRESSES: Comments should be submitted to: Commandant (G-CMC), [CGD 81-059a], U.S. Coast Guard, Washington, D.C. 20593. Between 8:00 a.m. and 4:00 p.m., Monday through Friday, comments may be delivered to and will be available for inspection or copying at the Marine Safety Council (G-CMC/21), Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, D.C. 20593 (202-426-1477).

FOR FURTHER INFORMATION CONTACT: CDR George N. Naccara, Project Manager, Office of Merchant Marine Safety (G-MVP), phone (202-426-2240)

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments. Comments should include the name and address of the person making them, identify this notice [CGD 81-059a], the specific section of the

proposal to which the comment applies, and the reason for the comment. All comments received before expiration of the comment period will be considered before final action is taken on this proposal. Public hearings are planned in Washington, D.C., New Orleans, Louisiana, and Houston, Texas. Dates and exact locations for these hearings will be published in a separate notice as soon as final arrangements have been made.

Drafting Information

The principal drafters of this notice are: CDR George N. Naccara, Office of Merchant Marine Safety, and CDR Ronald C. Zabel, Office of Chief Counsel.

Background

Major marine casualties on U.S. flag MODUs during the recent past have elicited quite similar recommendations from the National Transportation Safety Board (NTSB) and the Coast Guard marine boards of investigation. The MODU OCEAN EXPRESS capsized and sank on April 15, 1976—the pertinent comments from the NTSB were:

"Expedite the promulgation of the regulations for personnel qualifications and manning standards for self-elevating mobile offshore drilling units, and require that industrial personnel who perform seafaring duties obtain appropriate training and licenses."

"Determine and require a functional chain of command on mobile offshore drilling units to effectively cope with extreme situations."

The MODU OCEAN RANGER capsized and sank on February 15, 1982. Similar recommendations concerning personnel training and qualifications were:

"Expedite the promulgation of regulations regarding personnel qualifications and manning standards for mobile offshore drilling units."

"Require that the master and the person-in-charge of a MODU be licensed and that their licenses be endorsed as qualified in MODU operations, including knowledge of U.S. Coast Guard regulations, stability characteristics of MODUs, the operation of ballast systems on MODUs, and the use of lifesaving equipment peculiar to MODUs."

"Require that the person-in-charge of a MODU also be a certificated lifeboatman."

"Require that a control room operator on self-propelled and non-self-propelled semisubmersible MODUs be certificated or licensed and be qualified in the stability characteristics and ballasting procedures of MODUs and also as certified lifeboatman."

On October 25, 1983, the GLOMAR JAVA SEA capsized and sank. Although this vessel was a drillship, with distinct manning differences from semisubmersible MODUs, the NTSB drew the analogy from this casualty to the OCEAN EXPRESS, a self-elevating MODU and to the OCEAN RANGER, a column-stabilized MODU. The recommendation to the Secretary of the U.S. Department of Transportation read:

"Direct the Commandant of the U.S. Coast Guard to address immediately the early promulgation of personnel qualification and manning regulations for mobile offshore drilling units."

The Coast Guard has long recognized the need for special licenses adapted to the unique operations associated with mobile offshore drilling units. In response to this need, special industry licenses were created in 1973 for Master MODU, Mate MODU, Chief Engineer MODU and Assistant Engineer MODU. To date, 353 masters, 123 mates, 77 chief engineers, and 22 assistant engineers MODU licenses have been issued.

The Notice of Proposed Rulemaking to completely revise licensing regulations in Part 10 of Title 46, Code of Federal Regulations, published on August 8, 1983, at 48 FR 35920 included proposed rules which formalized the special industry licenses and extended their application to all mobile offshore units. The applicability and appropriateness of these special licenses for vessels engaged in offshore mineral and oil exploration and exploitation have often been questioned, but the need for some type of license and qualification for mobile offshore drilling units has never been more apparent.

Discussion of Comments

The comments to the proposed complete revision of Part 10 (licensing regulations) which specifically addressed the MODU sections expressed general opposition to a conventional licensing requirement for personnel on non-self-propelled, bottom bearing units and requested that the Coast Guard take the following action:

1. Publish a separate supplemental notice for MODU licensing and manning regulations;
2. Convene public hearings within the comment period;
3. Solicit more industry assistance and input to ensure appropriateness of any training, qualification, or examination standards; and,
4. Publish in the supplemental notice manning scales for self-propelled and non-self-propelled MODUs.

In this proposal the Coast Guard addresses each of those comments. The

MODU licensing and manning regulations have been separated into this supplemental notice of proposed rulemaking which is limited to licensing and manning on drilling units. Public hearings are planned for Washington, D.C., New Orleans, Louisiana, and Houston, Texas, during the 90 day comment period. The International Association of Drilling Contractors (IADC) prepared and offered to the Coast Guard a marine task analysis. This report analyzed realistic industry practices and essential marine tasks required of key positions. It also identified personnel training and qualification standards. The report provided valuable industry information to the Coast Guard and has been utilized in preparing this proposal. Proposed manning examples are also included in this notice to provide affected personnel an actual glimpse of Coast Guard plans. However, the final arrangement is a function of the local Officer in Charge, Marine Inspection and the owner or operator of the unit.

This proposal, in agreement with the industry task analysis, does not require any conventional licensed personnel on the non-self-propelled bottom bearing units. The Coast Guard is proposing new licenses and endorsements for service on MODUs. Experience in the drilling industry and an understanding of the marine aspects of drilling offshore are necessary criteria for a person in command of a non-self-propelled bottom bearing MODU.

Other countries already recognize the need for unique personnel qualifications with respect to MODUs. Discussions have been held at the International Maritime Organization (IMO) at various times during recent years. In fact, certain countries are currently requesting the IMO subcommittee on Standards of Training and Watchkeeping (STW) to establish uniform international standards of training and knowledge necessary for persons holding responsible positions on board MODUs. The position of the United States has been that the IMO subcommittee should "confine its consideration to the conventional maritime training and qualification standards appropriate * * * while in transit and on site floating * * *". The U.S. position paper delivered to IMO asserted that "consideration of the industrial aspects of such [MODU] operations is believed to be beyond the traditional expertise of the Subcommittee and should remain within the authority of each administration. It is indeed a difficult matter to determine the needed qualifications for a person in

charge of a MODU since industrial and maritime aspects are so intertwined. The industrial aspects tend to override the marine aspects in terms of specialized knowledge. This knowledge is typically obtained by on-the-job training coupled with short-term shoreside training courses, which include portions dealing with maritime procedures and responsibilities."

It is the Coast Guard's position that each country should be left to develop its own training and qualifications for the marine crews and those having joint marine/industrial responsibilities on MODUs. This philosophy is reflected in this proposal. The only statements concerning personnel qualifications and training on MODUs issued by the STW subcommittee exist in a working paper (STW/WP.4) and in IMO Resolution A.538 (13) which mention the necessary familiarity the person-in-charge should have with the characteristics, capabilities and limitations of the unit. These nearly identical documents further state that the person in charge must be fully cognizant of his or her responsibilities for conducting emergency drills, and that certain designated persons should possess the capability to operate all firefighting equipment and life-saving appliances. These concepts are also followed in this proposal.

MODU operations involve a complex combination of marine and industrial tasks. Although the greatest dangers may come from the drilling operation, recent MODU casualties have proven that marine hazards, primarily weather, also require constant attention to emergency procedures and casualty control actions. The problem is further complicated when responsibility shifts for different operating modes, such as underway, on station, or drilling. These considerations coupled with the huge monetary investment and the large number of lives involved mandate high personnel standards.

The Coast Guard is proposing three new specialized licenses that parallel the conventional master and mate licenses. These new licenses are designated offshore installation manager, barge supervisor, and ballast control operator. Use of these specialized licenses would be restricted to certain MODUs under certain operating conditions. Persons serving under these licenses would perform functions with equivalent authority and responsibility as conventional masters and mates. They are issued under the authority of 46 U.S.C. 7101 for non-self-propelled MODUs under tow or floating on station and also for self-propelled

MODUs. For self-propelled MODUs, including drillships, the conventionally licensed deck officers on board would have to obtain the appropriate endorsement indicated in the proposed manning examples. It is felt by the Coast Guard, supported by NTSB findings and by industry representatives, that masters and mates must have special training and some amount of experience on MODUs prior to assuming positions of responsibility on these vessels. Under the proposal, one to three months service and various industry-related training courses would be required. This is consistent with the proposed 46 CFR 10.101, which states that:

"* * * it is incumbent upon all licensed personnel to become familiar with all unique characteristics of each vessel served upon as soon as possible after reporting aboard for duty. As appropriate for a deck or engineer license, this includes but is not limited to: maneuvering characteristics of the vessel; proper operation of the installed navigation equipment; firefighting and lifesaving equipment; stability and loading characteristics; and main propulsion and auxiliary machinery."

The new descriptive titles for the MODU licenses best reflect the appropriate authorities and responsibilities of these specialized positions. Conflicts with training requirements, experience levels, and examinations would arise with the STCW 1978, Convention if the customary master, mate, etc., titles had been chosen. Under the Officers' Competency Certificates Convention, 1936 (46 U.S.C. 8304), the Coast Guard must define the license terms as equivalent to a master or mate. Furthermore, 46 U.S.C. 7101, the Coast Guard's specific licensing authority, lists only the conventional license titles. The Coast Guard considers that the licenses addressed in this proposal are in fact licenses as masters, mates, etc.; however, different titles have been utilized to more accurately reflect their specialized use.

Applicants for any of the three licenses would have to successfully complete a Coast Guard written examination appropriate to their tasks and responsibilities. Since these licenses alone do not authorize service underway independently, typical navigation, shiphandling and position determination topics were excluded. The emphasis instead was placed on ballasting and stability, emergency procedures, meteorology, lifesaving, firefighting, medical care, and maritime law and regulations. We will again request industry assistance to design a comprehensive examination and develop the questions. The Coast Guard

was quite satisfied with the results of the combined efforts of our own personnel in the Eight Coast Guard District, the Coast Guard Institute, and the representatives from industry in preparing workable, understandable and, most important, appropriate examinations for able seaman-MOU and lifeboatman-MOU ratings.

For those persons who obtained master (MODU) or mate (MODU) licenses under the policy guidelines in effect since 1973, the following conversion is proposed. The endorsement or license as Offshore Installation Manager (OIM), Barge Supervisor or Ballast Control Operator may be obtained by providing evidence of an equivalent amount of service and attendance at the appropriate required training courses.

A clear chain of command is essential on all MODUs. The issue of "who is in charge?" has often been cause for concern. In this proposal, the person having ultimate authority is clearly the offshore installation manager (OIM), or the master or mate with OIM endorsement, as appropriate. Our position does not rule out a concept of shared responsibility in some situations (but not shared authority) or the use of specialists in directing or assisting roles. The point to be made is that continuity and control must be assured through a central authority familiar with MODU characteristics, personnel, and with an appreciation for all aspects of MODU operations.

The Coast Guard encourages and expects each company owning or operating MODUs to concisely state in their operating manuals that on self-propelled MODUs the master (with appropriate license endorsement) or on non-self-propelled MODUs, the person serving in the capacity of offshore installation manager, has complete and ultimate responsibility for the rig. In the event that there is more than one person qualified to serve as OIM, it would be the responsibility of the owner of a unit or the owner's agent to designate the OIM in charge. There shall be only *one person serving in the capacity of OIM*. Certainly, this designation is essential for effective operations. Current and other proposed regulatory projects pertaining to MODUs still refer to the "master" or the "person-in-charge" for various responsibilities; however, these terms may also be replaced by the new license title in appropriate sections.

In determining a sufficient manning scale to operate any MODU, the Officer in Charge, Marine Inspection, (OCMI) must consider many factors in addition to specific statutory and regulatory

requirements. These factors include, but are not limited to: size of vessel; self-propelled or non-self-propelled status; floating or bottom bearing mode; length of voyage and route; fire protection and life saving equipment; number of personnel carried aboard; general arrangement of vessel equipment; level of qualification of each crew member to perform normal or emergency tasks; and, successful operation of similar vessels.

The following proposed manning scales would become part of our published policy in the Marine Safety Manual:

Proposed Manning Examples

1. Self-propelled (including drillships) MODUs underway independently (voyage of more than 400 miles):
 - 1-Master (with Offshore Installation Manager endorsement)
 - 1-Chief Mate (with Ballast Control Operator endorsement)
 - 2-Mates (with Ballast Control Operator endorsement)
 - *6-Able Seamen
 - 2-Ordinary Seamen
 - *Lifeboatmen
 - *1-Radio Officer
 - 1-Chief Engineer
 - 1-First Assistant Engineer
 - 2-Assistant Engineers
 - 3-QMEDs
2. Self-propelled MODUs (including drillships) underway independently (voyage of 400 miles or less):
 - 1-Master (with Offshore Installation Manager endorsement)
 - 2-Mates (with Ballast Control Operator endorsement)
 - 3-Able Seamen
 - 1-Ordinary Seaman
 - *Lifeboatmen
 - *1-Radio Officer
 - 1-Chief Engineer
 - 2-Assistant Engineers
 - 3-QMEDs
3. Self-propelled MODUs (including drillships) under tow or on station:
 - 1-Master (with Offshore Installation Manager endorsement)
 - 1-Chief Engineer
 - 2-Ballast Control Operators (one must hold unlimited mate license)
 - *2-Able Seamen
 - *1-Ordinary Seaman
 - 2-QMEDs
4. Non-self-propelled MODUs under tow or on station, not bottom bearing:
 - 1-Offshore Installation Manager (or OIM endorsement)
 - *1-Barge Supervisor (or Barge Supervisor endorsement)
 - *2-Ballast Control Operators (or Ballast Control Operator endorsement)

2-Able Seamen

*1-Ordinary Seaman

5. Non-self-propelled MODUs on station, bottom bearing:

1-Offshore Installation Manager (or OIM endorsement)

2-Able Seamen

*1-Ordinary Seaman

*Variables.

Personnel in the offshore drilling industry are also reminded that all persons aboard MODUs are considered seamen and are a part of the crew. As such, they are required under 46 U.S.C. 8702 to hold merchant mariner's documents. The Coast Guard realizes that this issue has not been addressed consistently in the past, but is taking steps to promote uniform policy and resolution of enforcement problems.

Three other items must be discussed which are not specifically addressed in the proposal and we encourage specific comment from the public. First, the Coast Guard historically has relaxed manning levels when a unit is in a bottom-bearing mode or when on location making short in-field moves. Public comments are encouraged on definitions for "bottom-bearing mode" (i.e., when the unit is in the final elevated position prior to commencement of drilling?) and a "short in-field move" (should we limit a move based on distance, duration, or both?). The second item concerns a need for a MODU engineer license. Relaxing the manning levels for a self-propelled MODU on station or under tow is justified, but should the Coast Guard design a MODU restricted engineer (as has been available for 12 years, but rarely utilized)? Should the conventional licensed engineer obtain an endorsement for MODUs similar to the deck officers? There is some industry support on these licensed engineer issues and public comments are requested.

The third involves industry self-certification of training courses. Of the various required courses, there are alternate methods of assuring quality control such as: formal Coast Guard review and approval as is in effect for over 200 existing courses; International Association of Drilling Contractors (IADC) or other industry association approval; Minerals Management Service (MMS) or other government agency approval; or merely school or company self-certification by stating compliance with a published curriculum. Public comments are encouraged in this regard to assist us in defining an appropriate quality assurance process.

The text of these proposed regulations is designed to fit into the remainder of

the proposed changes to Parts 10 and 157 (redesignated as Part 15) which were published in a recent supplemental notice of proposed rulemaking.

Regulatory Evaluation

The Coast Guard considers these proposed regulations to be non-major under Executive Order 12291 and non-significant under DOT regulatory policies and procedures (44 FR 11034; 26 February 1979). Published as a supplemental NPRM under the Licensing of Officers project, Coast Guard docket 81-059 contains a full draft regulatory evaluation which also applies to this proposal. It may be inspected or copied at the Marine Safety Council (G-CMC/21) [CGD 81-059], Room 2100, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, D.C. 20593, from 8 a.m. to 4 p.m.

The costs associated with the proposal primarily concern training of personnel. The regulations are not expected to have a significant economic impact. The proposal will not require any major expenditures by the maritime industry, consumers, Federal, state or local governments. The proposal requires individuals serving in certain responsible positions on MODUs of either the self-propelled or non-self-propelled type to obtain a Coast Guard issued license or endorsement that qualifies them for the positions held. Implementation would not increase manning requirements on MODUs but rather would set a standard for training and experience for certain responsible positions. Persons holding these positions on MODUs would have to meet licensing qualifications including a particular level of experience on MODUs, completion of training courses, physical standards and professional examination. Most drilling companies already require high standards of experience and training for the people serving on their units.

The cost of the training required by the proposal is summarized below. The total cost of \$5,123,290 presumes that all personnel that will be required to hold the proposed licenses or endorsements on all active U.S. flag MODUs would require the training. The total may be considered to be a one-time start-up cost with minimal additional costs in the ensuing years. Of course, anyone entering the industry thereafter would be required to meet the same requirements; however, the offshore industry has been on a hiring plateau or decline for the past few years and there appears to be no problems in drawing from the current pool of qualified personnel. The following factors will

significantly reduce the total cost shown in the evaluation. It is, however, impractical to quantify the exact cost savings without polling every licensee and potential license holder in the industry:

(1) Through conversations with industry representatives, it was determined the proposed amounts of experience are reasonably equivalent to the level of those persons serving in present positions of responsibility;

(2) Many assigned personnel also hold previously issued Coast Guard licenses as master MODU (353 licenses issued), mate MODU (123 licenses), chief engineer MODU (77 licenses) and assistant engineer MODU (22 licenses). By virtue of holding these licenses, they will have met our current Coast Guard qualification standards including experience, physical standards and professional examination. The license holders would have to meet the training requirements however;

(3) Many established drilling companies have designed and developed their own in-house training courses and facilities; therefore, these companies already train their personnel in similar courses to what is contained in the proposal without any federal or state regulatory mandate. While some costs must still be absorbed, such as loss of productive work time, salary, travel and per diem, the actual cost of the training will be much less when provided by the parent company. Furthermore, by allowing industry certification of courses in most cases, rather than Coast Guard approval, additional flexibility is provided for on-site training with company employees, video cassettes and other portable training devices; and,

(4) The Minerals Management Service (MMS) already requires attendance at a training course for blow-out prevention or well-control training for persons in certain positions on MODUs. The Coast Guard will accept evidence of completion of the required MMS course as satisfying this training requirement.

As explained previously, the total cost will be mitigated by company owned or sponsored training offered on-site to large groups of personnel, among many other factors. Furthermore, the costs associated with licensing and qualifications of the personnel in positions of responsibility on MODUs are quite insignificant when compared to typical MODU construction costs and operating fees. Current estimates of construction range from \$40-\$70 million for a jack-up rig, \$70-\$110 million for a semisubmersible and \$55-\$125 million for a drillship. Operating fees range widely from \$15,000-\$20,000 per day for

jack-ups, \$35,000-\$45,000 per day for semisubmersibles, to \$12,000-\$50,000 per day for drillships. The training and qualifications contained in the proposal, which are strongly recommended by the National Transportation Safety Board, generally supported by industry and under serious consideration internationally, will certainly be justified if they contribute to the prevention of the loss of even one MODU and its crew, or even minimize the down-time of an operating unit.

Summary of Costs

Course and Costs

1. Basic and advanced buoyancy and stability—Cost estimates range from Basic: \$275/student—\$925/student. Average \$665. Advanced: \$665/student—\$1500/student. Average \$1000
2. Drilling equipment safety and management—Cost estimates ranged from \$240/student on-the-job with video cassettes to \$1700/student for 4 weeks at school. Average \$500
3. Blowout prevention or well-control training—Cost estimates ranged from \$250/student for 3 days MMS approved course to \$925/student for 4½ day course. Average \$400
4. Hydrogen Sulfide Training—Cost estimates ranged from \$80/student for one day course to \$200/student for a two day course. Average \$135
5. Survival suit and survival craft training—Cost estimates ranged from \$120/student to \$750/student. Average \$175

Other qualifications such as able seaman and lifeboatman are also required for the license holders. In order to obtain these endorsements, an applicant must meet certain qualifications, including an amount of sea service. A partial amount of sea service may be substituted by training, which, although not mandatory, would also increase costs.

Training in first aid and cardiopulmonary resuscitation (CPR) is another basic qualification requirement for all licenses. This is not a new or additional requirement and would have been met by all who possess masters, mates or MODU licenses previously. This, besides the fact that most companies already require first aid/CPR training of their personnel, would tend to minimize the economic impact of the proposal. The estimated costs are:

First aid/CPR—Cost estimates ranged from \$50/student for a one day course to \$720/student for a two week course. Average \$200.

The most recent list of active U.S. flag MODUs indicated a total of 305 vessels composed of:

Semi-submersibles—51
Submersibles—26
Drillships—8
Jack-ups—214
Others—6

Of the 77 semi-submersibles and submersibles, it is estimated that fewer than 10 of these are considered (on their C.G. certificate of inspection) self-propelled. Therefore, the field of MODUs affected by this proposal is 18 self-propelled and 287 non-self-propelled units. The drillships and other self-propelled units are manned by conventionally licensed personnel who must obtain the specific types of training indicated above. Cost estimates for all required training for personnel on self-propelled units is determined in the following manner (standard industry practice with 6 months on/6 months off schedule for each position = 2 people per position per year):

(a) Manning on drillships = 1 master, 3 mates. Number of people per officer positions (billet) per year = 2.—Training costs = $1865 + 500 + 400 + 135 + 175 = \2875 each.

Therefore, $8 (\text{drillships}) \times 4 (\text{officers}) \times 2 (\text{people per billet}) \times \$2875 (\text{cost for all courses}) = \$184,000$ for approximately 18 days of training.

(b) For all other self-propelled vessels: Manning on units = 3 (officers) Number of people per officer position (billet) per year = 2 Number of vessels = 10

Therefore, $10 (\text{ships}) \times 3 (\text{officers}) \times 2 (\text{people per billet}) \times \$2875 = \$172,500$.

Cost estimates for all required training for personnel on non-self-propelled units is determined as follows:

(a) Manning on jackups = 1 licensed officer.

Number of people per billet per year = 2
Number of units = 214

Training requirement costs = $\$2875 + \$200 (\text{first aid/CPR}) = \3075

Therefore, $214 (\text{units}) \times 1 (\text{officer}) \times 2 (\text{people per billet}) \times \$3075 = \$1,316,100$ for jack-up units for approximately 20 days of training.

(b) Manning on non-self-propelled units (other than jack-ups) = 2-3 officers.

Number of people per billet each year = 2

Number of units = 73

Training requirement costs = $\$3,075$ for 1 off. on each and $\$2,040$ for 1.5 off. on each ship

Therefore, $[73 (\text{units} \times 1 (\text{off}) \times 2 (\text{per billet}) \times \$3,075] + [73 \times 1.5 \times 2 \times \$2,040] = \$448,950$ for 20 days of training + $446,760$ for 14 days of training = $\$895,710$.

Combining the four MODU categories, the total costs for the training courses is: $\$184,000 + \$172,500 + \$1,316,100 + \$85,710 = \$2,568,310$.

The total combined length of the training courses required by this proposal is approximately 14-20 days. The estimated cost for obtaining the license (application and processing may be done through the mail) is based on 1-3 days for completing required examinations. Calculating the costs for per diem and travel for each person is quite difficult. Many courses are offered by the parent company on the drilling site rather than moving the trainee to the school. Other companies do not pay per diem to personnel in training, but pay the base salary alone. An average per diem rate is approximately \$85 per day. Travel, which will be minimal in many cases as the training sites may be on board the MODU, at the company arranged location worldwide or concentrated in the Gulf Coast area of the United States, is estimated to be \$250 per person per course. The absolute maximum cost of per diem and travel are estimated as follows:

Number of personnel affected by training requirements:

Drillships—64 with 18 days of training for 5 courses

Other self-propelled MODUs—60 with 18 days of training for 5 courses

Jack-ups—428 with 20 days training for 6 courses

Other non-self-propelled MODUs—219 with 73 at 20 days training for 6 courses and 146 with 14 days and 3 courses

Total cost of travel and per diem for training:

Drillships = $64 \times [18 (\$85) + 5 (250)] = 64 [1530 + 1250] = 64 (2780) = \$177,920$

Other self-prop = $60 \times [18 (85) + 5 (250)] = 60 \times [1530 + 1250] = 60 (2780) = \$166,800$

Jack-ups = $428 \times [20 (85) + 6 (250)] = 428 [1700 + 1500] = 428 (3200) = \$1,369,600$

Other non-self-prop = $73 [20 (85) + 6 (250)] + 146 [14 (85) + 3 (250)] = 73 [1700 + 1500] + 146 [1190 + 750] = 73 (3200) + 146 (1940) = 233,600 + 283,240 = \$516,840$

Therefore, the maximum estimated costs for training, travel and per diem are:

$\$177,920 + 166,800 + 1,369,600 + \$516,840 = \$2,231,160$

For obtaining the license, the applicant is estimated to require 1-3 days at a Coast Guard Regional Examination Center.

The total will be: 771 (individuals) [2 days (\$85/day) + \$250 (per visit)] = $771 [170 + 250] = 771 (420) = \$323,820$

Combining the costs for the training courses, travel and per diem associated with training, and travel and per diem associated with obtaining a license, the total costs resulting from this proposal (excluding firefighting training which is addressed in CGD 81-059) are:

\$2,568,310
2,231,160
323,820

Total \$5,123,290.....

The agency certifies that this proposal will not have a significant economic impact on a substantial number of small entities. These proposed rules apply to licenses for individuals only. The effect on training schools would be to formalize the requirement to attend such industry-specific training; currently, such training is required by the Minerals Management Service in one case, or is optional for the individuals serving on the MODU at the discretion of the owner/operator.

This proposed rulemaking contains information collection requirements in Section 10.468. They have been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act of 1980. (44 U.S.C. 3501 *et seq.*). The collection requirements will only affect applicants for licenses in that they must provide a certificate as evidence of required training. The certificate will be supplied by the training facility which provides the course(s). The time required to comply with this requirement is inconsequential. Persons desiring to comment on these information collection requirements should submit their comments to: Office of Regulatory Policy, Office of Management and Budget, 726 Jackson Place, N.W., Washington, D.C. 20503. Attn: Desk Officer, U.S. Coast Guard. Persons submitting comments to OMB are also requested to submit a copy of their comments to the U.S. Coast Guard as indicated under "ADDRESSES."

List of Subjects

46 CFR Part 10

Seamen, Marine safety, Navigation (water), Passenger vessels.

46 CFR Part 15 (redesignated from Part 157)

Seamen, Vessels.

Proposed Regulations.

In consideration of the foregoing the Coast Guard proposes to amend the previously proposed amendments to Title 46, Code of Federal Regulations,

published elsewhere in this issue as set forth below:

PART 10—LICENSING OF MARITIME PERSONNEL

1. The authority citation for Part 10 is revised to read as follows:

Authority: 46 U.S.C. 7101; 43 U.S.C. 1333(d); 49 CFR 1.46 (b) and (z).

2. In § 10.103 new paragraphs (q), (w), (x), and (y) are added to read as follows:

§ 10.103 Definitions of terms used in this part.

(q) *Mobile offshore drilling unit (MODU)* means a vessel capable of engaging in drilling operations for the exploration or exploitation of subsea resources. MODUs may be self-propelled (equipped with propulsion machinery that provides for independent underway navigation) or non-self-propelled. MODU designs include:

(1) "Self-elevating (or jackup) units" with moveable (bottom bearing) legs capable of raising its hull above the surface of the sea;

(2) "Surface type units" with a ship shape or barge type displacement hull of single or multiple hull construction intended for operating in a floating condition (semi-submersible type included); and,

(3) "Submersible units" of ship shape, barge type or novel hull design (other than a self-elevating unit) intended for operating while bottom bearing.

(w) *Offshore Installation Manager* is a licensed officer restricted to service on non-self-propelled MODUs. An assigned offshore installation manager is equivalent to a conventionally licensed master or the person-in-charge and has complete and ultimate command of the unit.

(x) *Barge Supervisor* is a licensed officer restricted to service on non-self-propelled MODUs.

(y) *Ballast Control Operator* is a licensed officer restricted to service on non-self-propelled MODUs.

3. Section 10.468 is added to read as follows:

§ 10.468 Licenses for mobile offshore drilling units.

(a) Licenses for service on mobile offshore drilling units (MODUs) authorize service on non-self-propelled units of any gross tons upon ocean waters while under tow or at the exploration or exploitation site. These licenses do not authorize service on self-propelled units when underway independently. Licenses are issued as

Offshore Installation Manager, Barge Supervisor, and Ballast Control Operator.

(b) For a license as *offshore installation manager*, an applicant must have:

(1) Four years of service on MODUs with at least two years of service as driller, toolpusher, assistant toolpusher, barge supervisor, mechanical supervisor, electrician, ballast control operator or equivalent supervisory position; or,

(2) An appropriate Bachelor of Science degree from a recognized school of technology accredited by the Accreditation Board for Engineering and Technology and have at least two years of service with one year in a supervisory position on MODUs.

(3) In addition to the general requirements for license discussed in subpart 10.200 and successful completion of the examination in subpart 10.931, the applicant must also present certificates and evidence of course completion as follows:

(i) Able seaman certificate;
(ii) Basic and advanced buoyancy and stability course certificates (Coast Guard approved);

(iii) Drilling equipment safety and management courses (industry self-certification—evidence of completion only);

(iv) Blow out prevention—well control training (U.S. Minerals Management Service (MMS) approved);

(v) H₂S training (industry self-certification—evidence of completion only) and,

(vi) Survival suit and survival craft training (industry self-certification—evidence of completion only).

(4) Applicants holding master, chief mate or second mate unlimited licenses must meet the requirements in paragraph (b)(3) of this section and have three months of service on MODUs in order to obtain an endorsement for offshore installation manager.

(c) For a license as *barge supervisor*, an applicant must have:

(1) Three year of service on MODUs with at least one year of service as mechanic, electrician, driller, subsea specialist, or ballast control operator or equivalent supervisory position; or,

(2) An appropriate Bachelor of Science degree from a recognized school of technology accredited by the Accreditation Board for Engineering and Technology and have one year of service of MODUs of which at least six months have been served as ballast control operator.

(3) In addition to the general requirements for license discussed in subpart 10.200 and successful

completion of the examination in subpart 10.932, the applicant must also present certificates and evidence of course completion as follows:

(i) Able seaman certificate;
(ii) Basic and advanced buoyancy and stability course certificates (Coast Guard approved);

(iii) H₂S training (industry self-certification—evidence of completion only); and,

(iv) Survival suit and survival craft training (industry self-certification—evidence of completion only).

(4) Applicants holding master or mate unlimited licenses must meet the requirements in paragraph (c)(3) of this section and have three months of service on MODUs in order to obtain an endorsement for barge supervisor.

(d) For a license as *ballast control operator*, an applicant must have:

(1) One year of service on MODUs with three months of training in the position of control room operator; or,

(2) An appropriate Bachelor of Science degree from a recognized school of technology accredited by the

Accreditation Board for Engineering and Technology and three months of training in the position of ballast control operator.

(3) In addition to the general requirements for license discussed in subpart 10.200 and successful completion of the examination in subpart 10.933, the applicant must also present certificates and evidence of course completion as follows:

(i) Lifeboatman certificate;
(ii) Basic and advanced buoyancy and stability course certificates (Coast Guard approved); and,

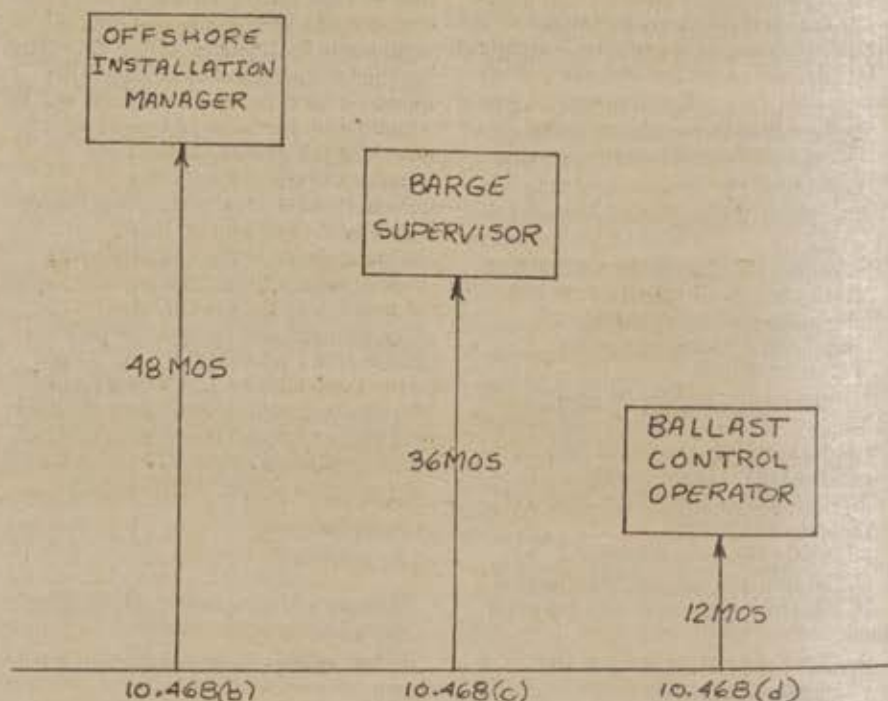
(iii) Survival suit and survival craft training (industry self-certification—evidence of completion only).

(4) Applicants holding master or mate unlimited licenses must meet the requirements in paragraph (d)(3) of this section and have one month of service on MODUs in order to obtain an endorsement for ballast control operator.

§ 10.470 [Amended].

4. Figure 10.470 is added to § 10.470.

Figure 10.470 MODU Licenses



5. Section 10.931 is added to read as follows:

§ 10.931 Offshore installation manager.

An applicant for a license as offshore installation manager must pass an

examination on the subjects listed in this section.

(a) Watchkeeping and position determination:

- (1) COLREGS.
- (2) "Basic Principles to be Observed in Keeping a Navigational Watch."

(b) Meteorology and oceanography:

- (1) Synoptic chart weather forecasting.
- (2) Characteristics of weather systems.

- (3) Ocean current systems.
- (4) Tide and tidal current publications.
- (5) Tide and tidal current calculations.

(c) Stability, ballasting, construction and damage control:

- (1) Principles of construction, structural members.
- (2) Trim and stability.

- (3) Damage trim and stability, counter measures.
- (4) Stability, trim, and stress calculations.

- (5) IMO stability recommendations.
- (6) Casualty control.

- (7) Operating manual.
- (d) Maneuvering and handling:

- (1) Anchoring and anchor handling.
- (2) Heavy weather operations.

- (3) Mooring, positioning.
- (4) Towing operations, general.

- (e) Fire prevention and firefighting appliances:

- (1) Organization of fire drills.
- (2) Classes and chemistry of fire.

- (3) Firefighting systems.
- (4) Firefighting equipment and regulations.

- (5) Basic firefighting and prevention.
- (f) Emergency procedures and contingency plans:

- (1) Temporary repairs.
- (2) Fire or explosion.

- (3) Abandon ship.
- (4) Man overboard.

- (5) Heavy weather.
- (6) Collision.

- (g) General engineering-power plants and auxiliary systems:

- (1) Marine power plant operating principles.
- (2) Auxiliary machinery.

- (3) Marine engineering terms.
- (h) Deck seamanship—general:

- (1) Transfer of personnel.
- (2) Support boats/helicopters.

- (3) Cargo stowage and securing.
- (4) Hazardous materials/dangerous goods precautions.

- (5) Mooring equipment.
- (6) Crane use procedures and inspections.

- (i) Medical care:
- (1) Knowledge and use of:

- (i) International Medical Guide for Ships.
- (ii) Ships Medicine Chest and Medical Aid at Sea.

- (2) First aid.
- (3) Preventive and controlled medicines.

- (4) First response medical action.
- (j) Maritime law and regulations:

- (1) International law:
- (i) Certification and documentation of vessels required by international conventions.

- (ii) SOLAS.
- (iii) International Convention on Prevention of Pollution from Ships (MARPOL 73/78).

- (iv) International health regulations.
- (2) National maritime law:

- (i) Certification and documentation of vessels.
- (ii) Ship sanitation.

- (iii) Rules and regulations for vessel inspection.
- (iv) Pollution prevention regulations.

- (3) Rules and regulations for MODUs.
- (k) Personnel management and training:

- (1) Ship's business including:
- (i) Required logs and recordkeeping.

- (ii) Shipping articles.
- (iii) Casualty reports and records.

- (2) Shipboard organization.
- (3) Required crew training.

- (l) Communications:
- (1) Radiotelephone communications and FCC permit.

- (2) Radiotelegraph emergency distress signals and frequencies.
- (3) Radiotelephone procedures.

- (m) Lifesaving/survival:
- (1) Lifesaving appliances and operation (launching, boat handling).

- (2) Procedures and regulations involving lifeboats, survival suits, PFDs liferafts and work vests, emergency signals.
- (3) Hypothermia/exposure.

- (4) Emergency radio transmissions.

6. Section 10.932 is added to read as follows:

- § 10.932 Barge supervisor.

- An applicant for a license as barge supervisor must pass an examination on the subjects listed in this section.
- (a) Meteorology and oceanography:

- (1) Synoptic chart weather forecasting.
- (2) Characteristics of weather systems.

- (3) Ocean current systems.
- (4) Tide and tidal current publications.

- (b) Stability, ballasting, construction and damage control:

- (1) Principles of construction, structural members.
- (2) Trim and stability-basic theories.

- (3) Damage trim and stability, counter measures.
- (4) Stability, trim and stress calculations.

- (5) IMO stability recommendations.
- (6) Casualty control.

- (7) Operating manual.
- (8) Ballasting procedures.

- (c) Anchoring and anchor handling.
- (d) Marine engineering terms.

- (e) Emergency procedures and contingency plans:

- (1) Temporary repairs.
- (2) Fire or explosion.

- (7) Operating manual.
- (8) Ballasting procedures.

- (9) Load line requirements.
- (c) Maneuvering and handling:

- (1) Anchoring and anchor handling.
- (2) Heavy weather operations.

- (d) Fire prevention and firefighting appliances:

- (1) Organization of fire drills.
- (2) Classes and chemistry of fire.

- (3) Firefighting systems.
- (4) Firefighting equipment and regulations.

- (5) Basic firefighting and prevention/isolation and containment of fire.
- (e) Emergency procedures and contingency plans:

- (1) Temporary repairs.
- (2) Heavy weather.

- (3) Collision.
- (f) General engineering—power plants and auxiliary systems:

- (1) Mathematics involved in engineering calculations.
- (2) Marine engineering terms.

- (g) Deck seamanship—general:
- (1) Transfer of personnel.

- (2) Support boats/helicopters.
- (h) Lifesaving/survival:

- (1) Lifesaving appliances and operation (launching, boat handling).
- (2) Procedures and regulations involving lifeboats, liferafts, survival suits, PFDs and work vests.

- (3) Hypothermia/exposure.
- (4) Emergency radio transmissions.

7. Section 10.933 is added to read as follows:

- § 10.933 Ballast control operator.

- An applicant for a license as ballast control operator must pass an examination on the subjects listed in this section.
- (a) Meteorology and oceanography:

- (1) Synoptic chart weather forecasting.
- (2) Characteristics of weather systems.

- (b) Stability, ballasting, construction and damage control:

- (1) Principles of construction, structural members.
- (2) Trim and stability—basic theories.

- (3) Damage trim and stability, counter measures.
- (4) Stability, trim and stress calculations.

- (5) IMO stability recommendations.
- (6) Casualty control.

- (7) Operating manual.
- (8) Ballasting procedures.

- (c) Anchoring and anchor handling.
- (d) Marine engineering terms.

- (e) Emergency procedures and contingency plans:

- (1) Temporary repairs.
- (2) Fire or explosion.

- (3) Abandon ship.
- (4) Heavy weather.
- (5) Collision.
- (6) Failure of ballast control system.
- (f) Lifesaving/survival:
 - (1) Lifesaving appliances and operation (launching, boat handling).
 - (2) Procedures and regulations involving lifeboats, liferafts, survival suits, PFDs and work vests.

PART 15—MANNING REQUIREMENTS

8. The authority citation for Part 15 will read as follows:

Authority: 46 U.S.C. 3703; 8105; 9102; 49 CFR 1.46 (b) and (z).

9. To § 15.301, paragraphs (a) (9), (10) and (11) are added to read as follows:

§ 15.301 Definition of terms used in this part.

(a) * * *

- (9) Offshore Installation Manager.
- (10) Barge Supervisor.
- (11) Ballast Control Operator.

10. Section 15.420 is added to read as follows:

§ 15.420 Mobile offshore drilling units.

(a) Licenses as offshore installation manager, barge supervisor, or ballast control operator authorize service upon ocean waters for non-self-propelled mobile offshore drilling units (MODUs) in all modes of operation. A person holding an ocean unlimited master or mate license must obtain the necessary qualifications discussed in subpart 10.468 in order to obtain any MODU license endorsement.

(b) MODUs must, at all times, be under the actual direction and control of:

- (1) An unlimited ocean master with an offshore installation manager (OIM) endorsement for self-propelled MODUs; or
- (2) An individual with a license or endorsement as OIM for non-self-propelled MODUs.

11. To § 15.805, new paragraphs (c) and (d), are added to read as follows:

§ 15.805 Master.

(c) On self-propelled MODUs the person in charge must hold an appropriate license as master with the

offshore installation manager endorsement.

(d) On non-self-propelled MODUs, the person in charge must hold a license or endorsement as offshore installation manager.

12. To § 15.810, new paragraphs (d) and (e) are added to read as follows:

§ 15.810 Mates.

(e) On self-propelled MODUs, the mates must hold an appropriate license with OIM, barge supervisor, or ballast control operator endorsement.

(f) On non-self-propelled MODUs, the barge supervisor and ballast control operators must hold appropriate licenses authorizing service in that capacity.

J. W. Kime,

Commodore, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

[FR Doc. 85-25000 Filed 10-23-85; 8:45 am]

BILLING CODE 4910-14-M

46 CFR Parts 10, 15, 35, 157, 185, 186, and 187

[CGD 81-059 and 81-059a]

Hearings for Licensing of Maritime Personnel and Licensing of Officers and Operators for Mobile Offshore Drilling Units

AGENCY: Coast Guard, DOT.

ACTION: Notice of public hearings.

SUMMARY: Elsewhere in this issue of the Federal Register the Coast Guard is publishing a supplemental notice of proposed rulemaking on Licensing of Maritime Personnel and a supplemental notice of proposed rulemaking for Licensing of Officers and Operators for Mobile Offshore Drilling Units. Those documents discuss the fact that public hearings are planned on both items and that a separate notice will be published giving the exact times, dates, and places for the hearings. The document contains those particulars.

DATES: The Coast Guard will hold public hearings on January 8, 1986, January 15, 1986, January 22, 1986, January 29, 1986, and February 5, 1986. All hearings will begin at 10:30 a.m. and end at 4 p.m. or whenever all comments have been heard, whichever occurs first.

ADDRESSES: Public hearings will be held at the following locations:

(1) January 8, 1986

Federal Building, North Auditorium, 4th floor, 915 Second Avenue, Seattle, Washington.

(2) January 15, 1986

Ramada Inn—Downtown, 1732 Canal Street, New Orleans, LA.

(3) January 22, 1986

FAA Headquarters Building Auditorium, 800 Independence Avenue SW., Washington, D.C.

(4) January 29, 1986

Ramada Inn, Hobby Airport West, Rooms 1 and 2, 7777 Airport Blvd., Houston, TX

(5) February 5, 1986

Coast Guard Support Center, New York, Base Theater, Governor's Island, New York

Attendance is open to the public. Persons wishing to present oral statements at the hearings should notify the Executive Secretary no later than three days before the hearing of the item toward which comments will be directed. Written comments may be submitted at any time before the end of the comment period. In order to assure orderly presentations and accurate records, comments will be received on Licensing of Maritime Personnel (CGD 81-059) first. When all comments have been received on this notice of proposed rulemaking, comments will be received on Licensing of Operators for Mobile Drilling Units (CGD 81-059A). Due to the expected volume of comments the Coast Guard encourages the submission of written copies of presentations and reserves the right to limit the length of oral presentations.

FOR FURTHER INFORMATION CONTACT:

Captain R.F. Ingraham, Executive Secretary, Marine Safety Council (G-CMC/21), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, D.C. 20593, telephone (202) 426-1477.

Dated: October 18, 1985.

W.J. Ecker,

Captain, U.S. Coast Guard, Acting Chief, Office of Merchant Marine Safety.

[FR Doc. 85-25429 Filed 10-23-85; 8:45 am]

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